

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of  
Noble Trust Company**

**JOINT MOTION OF LIQUIDATOR AND CREDIT SUISSE  
ASSENTED TO BY WELLS FARGO FOR APPROVAL OF  
SETTLEMENT AGREEMENT AND MUTUAL  
RELEASE OF CLAIMS REGARDING AXA POLICIES**

Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as Liquidator of Noble Trust Company (the "Liquidator" and "Noble Trust," respectively) and Credit Suisse Securities (USA) LLC, Credit Suisse Premium Finance LLC, Credit Suisse Management LLC, CSFB Private Insurance Brokerage LLC, Credit Suisse Lending Trust (USA) 2, and Credit Suisse Lending Trust (USA) 3 (collectively, "Credit Suisse"), by their undersigned counsel, jointly move this Court for entry of an order approving their Settlement Agreement and Mutual Release of Claims Regarding AXA Policies dated as of March 25, 2013 (the "Settlement Agreement").<sup>1</sup> This motion has been assented to by Wells Fargo Bank, N.A. ("Wells Fargo") by its undersigned counsel. The facts and circumstances supporting this motion are as set forth herein and as set forth in the Liquidator's Memorandum in Support of Settlement Motions filed concurrently herewith. In support of this motion, the Liquidator and Credit Suisse state as follows:

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<sup>1</sup> In accordance with the Court's Order Establishing Settlement Agreement Review Procedures dated December 5, 2012, a redacted copy of the Settlement Agreement is attached hereto as Exhibit A. Parties wishing to review the confidential affidavit submitted in support of this motion and the unredacted Settlement Agreement may obtain copies of such documents by contacting the Office of the Liquidator and following the Court approved procedures, including the execution of a confidentiality agreement. To the extent the redactions are of personal identifying information that an individual has requested be kept confidential, the Liquidator will not reveal such information without authorization from the particular individual or further order of the Court. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed in the Settlement Agreement.

## **Background**

1. In 2003, Noble Trust was organized and chartered under the laws of the State of New Hampshire as a non-depository banking corporation, and subject to regulation by the New Hampshire Banking Department (the "Banking Department").

2. As a result of irregularities discovered by the Banking Department's 2008 examination of Noble Trust, on February 11, 2008, Commissioner Peter Hildreth commenced a liquidation proceeding by filing a Verified Petition for Liquidation (the "Liquidation Petition") in this Court, seeking the appointment of a liquidator for Noble Trust pursuant to RSA 395:1, as well as related injunctive relief against Noble Trust pending the Court's ruling on the Liquidation Petition (the "Liquidation Proceeding").

3. On March 27, 2008, this Court entered an order (the "Liquidation Order" or the "Order Appointing Liquidator") appointing Commissioner Hildreth as liquidator of both Noble Trust and its parent company, Aegean Scotia. The Liquidator is the duly appointed successor liquidator of Noble Trust and Aegean Scotia by order of this Court dated February 1, 2013.

4. On June 11, 2008, the Court entered an order in the Liquidation Proceeding (the "Order Clarifying Order Appointing Liquidator") clarifying its injunction against the insurers that issued life insurance policies subject to the Order Appointing Liquidator, to include prohibiting such insurers from claiming that any such policy either had or could lapse, terminate, or otherwise expire by reason of nonpayment of premium without either the Liquidator's consent or an order of the Court.

5. Prior to the commencement of the Liquidation Proceeding, Credit Suisse provided premium financing with respect to thirteen (13) life insurance policies on the lives of individual Noble Trust clients, which policies were issued by AXA Equitable Life Insurance Company

("AXA"), as well as American National Life Insurance Company ("American National"), The Lincoln National Life Insurance Company ("Lincoln"), and PHL Variable Insurance Company ("Phoenix"). AXA issued seven (7) of these Credit Suisse-financed life insurance policies, more particularly identified on Schedule A to the Settlement Agreement (collectively, the "AXA Policies" or the "Policies"), which were issued of record respectively to certain irrevocable trusts, as to which trusts Noble Trust serves as trust protector and Wells Fargo serves as trustee (the "Life Insurance Trusts"). The premiums for the Policies were funded by Credit Suisse under written premium financing arrangements disclosed to AXA prior to the respective effective dates of the Policies. In connection with those premium financing arrangements, Credit Suisse received as collateral an assignment of all claims, options, privileges, rights, title and interest in, to and under the Policies, respectively.

6. The Liquidator has contended that the Policies are part of the liquidation estate being administered by the Liquidator pursuant to the Liquidation Order. Credit Suisse and Wells Fargo have asserted that the Policies were not properly included within the liquidation estate, and that the Liquidator has no valid interest in the Policies. AXA has made similar assertions.

7. In conjunction with his negotiations with AXA and each of the other insurers, the Liquidator also engaged in extensive, parallel negotiations with Credit Suisse and Wells Fargo to resolve their involvement in the Liquidation Proceeding and any and all claims that the Liquidator on one hand and Credit Suisse and Wells Fargo on the other hand may have against one another, whether related to the Policies or to any of the other policies that Credit Suisse financed. Because Credit Suisse and Wells Fargo assert an interest in each of the policies that Credit Suisse financed, a comprehensive settlement between the Liquidator and the insurers is

not possible without also resolving the interests of Credit Suisse and Wells Fargo in such policies.

8. The result of the Liquidator's negotiations with AXA, the other insurers and Credit Suisse/Wells Fargo is a series of settlement agreements between: (i) the Liquidator and each of the insurers, including AXA; (ii) the Liquidator on one hand and Credit Suisse/Wells Fargo on the other, relating to their overall claims against one another; and (iii) Credit Suisse/Wells Fargo and the respective insurers, relating specifically to the Credit Suisse-financed policies issued by those insurers—including the AXA Policies that are the subject of the Settlement Agreement.

9. Thus, by this Motion, the Liquidator and Credit Suisse seek approval of the Settlement Agreement. Through an entirely separate motion to the Court the Liquidator is also seeking approval of his settlement agreement with AXA relating to the AXA Policies (the "AXA-Liquidator Settlement Agreement"). Because the Settlement Agreement and the AXA-Liquidator Settlement Agreement each concern the Policies, these agreements are necessarily interrelated; the effectiveness of each being contingent upon the effectiveness of the other.

10. A full recitation of the background and additional arguments supporting this motion and the other contemporaneous motions to approve the separate settlement and release agreements by and between the Liquidator, American National, AXA, Credit Suisse, Lincoln National, Phoenix and Wells Fargo are set forth in the Liquidator's Memorandum in Support of Settlement Motions (the "Memorandum") that has been filed concurrently herewith. The Liquidator incorporates by reference the Memorandum.

### Summary of Settlement Agreement<sup>2</sup>

11. Under the Settlement Agreement, upon the Effective Date (defined below), the Liquidator, Credit Suisse and Wells Fargo agree that the Policies set forth in Schedule A as Released Policies, together with all agreements relating to or in connection with such policies (including without limitation the Collateral Assignments, Guarantees and Insurer Consent and Acknowledgments), shall be released from the Noble Trust estate, shall not constitute assets of the Noble Trust estate, and shall not be subject to any provisions of the Order Appointing Liquidator or the Order Clarifying Order Appointing Liquidator.

12. By this Motion and in accordance with the Settlement Agreement, the Liquidator seeks the Court's authorization to act as trust protector on behalf of Noble Trust for the limited purposes set forth in the Settlement Agreement and as described below. Within ten (10) business days of the Effective Date of the Settlement Agreement, the Liquidator shall: (i) effect Noble Trust's resignation as the trust protector of each Life Insurance Trust holding a Released Policy and (ii) appoint Ryan K. Crayne, of Winthrop & Weinstine, 225 South Sixth Street – Suite 3500, Minneapolis, Minnesota 55402 as the replacement trust protector in accordance with the terms of the applicable trust agreement.

13. Prior to resigning as protector of the Life Insurance Trusts holding the Released Policies, and within ten (10) business days of the Effective Date of the Settlement Agreement, the Liquidator, acting on behalf of Noble Trust, shall (i) create a new trust (in the form, or substantially the same form, as attached as Exhibit B to the Settlement Agreement) to be the beneficiary of certain of the Life Insurance Trusts which own certain of the Released Policies

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<sup>2</sup>Notwithstanding the recitation in this Motion of the material terms of the Settlement Agreement, this is a summary only and all parties in interest are urged to read the Settlement Agreement. In the event of any conflicts or inconsistencies between the summary contained in the Motion and the Settlement Agreement, then the terms of the Settlement Agreement shall control.

(the "New Beneficiary Trusts"); (ii) designate the applicable "New Beneficiary Trusts" as the beneficiaries pursuant to the provisions of the trust agreements for those Life Insurance Trusts; and (iii) name Ryan K. Crayne, of Winthrop & Weinstine, 225 South Sixth Street – Suite 3500, Minneapolis, Minnesota 55402 as the trustee for each of the New Beneficiary Trusts.<sup>3</sup> With respect to the Released Policy owned by the Marilyn Reamer CS Trust, the Liquidator agrees to resign as trustee of the applicable Beneficiary Trust, and to appoint Ryan K. Crayne as replacement trustee, contemporaneously with resigning as trust protector of the Life Insurance Trust holding that Policy. Once these actions have been taken, the Liquidator will have no further power to take any action with respect to, or exercise any power over, any of the Released Policies, the Life Insurance Trusts owning the Released Policies, or the New Beneficiary Trusts of such Life Insurance Trusts. Upon the Effective Date of the Settlement Agreement, neither the Liquidator, the Noble Trust estate, nor the prior Beneficiary Trusts (for which Noble Trust served as trustee) will have any further right, title or interest in the Life Insurance Trusts or the Released Policies.

14. Under the Settlement Agreement, upon the Effective Date, the Policies set forth in Schedule A as Voided Policies, shall be declared void *ab initio*. Credit Suisse's and Wells Fargo's interests in the Voided Policies, together with all agreements relating to or in connection with such policies (including without limitation the Collateral Assignments), shall be deemed to constitute assets of the Noble Trust estate and such policies shall be unenforceable. Neither Credit Suisse nor Wells Fargo shall have any obligations to any person, including without limitation to any third party, with respect to the Voided Policies, including with respect to the

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<sup>3</sup>The New Beneficiary Trust shall provide that at any time within one hundred eighty days after the trust instrument is executed, the majority in number of descendants who are living and competent may remove Mr. Crayne as the Trustee by a written notice delivered to Mr. Crayne; provided, however, that no such removal shall become effective until a successor Trustee has accepted such office.

payment of any unpaid premiums that may have become due and payable on or after February 11, 2008. Without limiting the applicability of any release provided in the Settlement Agreement, Credit Suisse and Wells Fargo each agree that they will not seek to enforce the Voided Policies or recover from any person, directly or indirectly, any of the premiums financed in connection with the Voided Policies or any obligations arising from any documents or agreements executed in connection with such premiums, whether pursuant to the loan agreements, the Collateral Assignments, or any other documents or agreements, including any and all personal guarantees. Neither Credit Suisse nor Wells Fargo shall have any further obligations with respect to the Voided Policies.

15. Pursuant to the Settlement Agreement, and as set forth more fully therein, the Liquidator on the one hand and Credit Suisse and Wells Fargo on the other shall release each other from any and all claims arising out of or relating in any way to the Policies. The Liquidator and Credit Suisse further agree to release each other from all other claims which either may have against another, however, such general release does not include any claims that may exist relating to any of the policies that Credit Suisse financed that were issued to Noble Trust clients by ANICO, Lincoln National or Phoenix. Additionally, the Liquidator, Credit Suisse and Wells Fargo and all third parties shall be barred from making or asserting any claims against the Policies or against Credit Suisse or Wells Fargo.

16. Credit Suisse has paid a confidential sum (the "Settlement Funds") into an escrow account. Within ten (10) business days of the Effective Date, Credit Suisse shall release the Settlement Funds from escrow and direct that they be paid to an account designated by the Liquidator.

17. By its terms, the Settlement Agreement does not become effective (the "Effective Date") unless and until the entry of final orders by the Court in the Liquidation Proceeding approving the Settlement Agreement and the AXA-Liquidator Settlement Agreement ("Court Approval"), and the execution of a separate agreement between Credit Suisse and AXA relating to the Policies, which separate agreement has been fully executed and is attached as Exhibit A to the Settlement Agreement. The Court Approval shall be deemed to occur on the date that such orders shall have become non-appealable or, in the event of an appeal(s), have been affirmed after all appeals therefrom have been exhausted.

18. The Liquidator, Credit Suisse and Wells Fargo believe the Settlement Agreement is fair, reasonable and adequate, and is the result of arms-length negotiations between the parties and their counsel. The Settlement Agreement maximizes the value of the liquidation of Noble Trust by relieving further costs and potential risk of continued litigation with AXA, the other insurers, and Credit Suisse and Wells Fargo, and provides the basis for the comprehensive resolution that the Liquidator, Credit Suisse and Wells Fargo have negotiated concerning all policies financed by Credit Suisse, of which the Settlement Agreement and the AXA-Liquidator Settlement Agreement is an independent but integral part.

19. The Liquidator therefore believes that entering into the Settlement Agreement and the AXA-Liquidator Settlement Agreement is an appropriate and prudent exercise of the Liquidator's judgment, and that the settlements resolve the pending disputes between the Liquidator, AXA and Credit Suisse/Wells Fargo concerning the Policies on terms that are advantageous to the liquidation of Noble Trust and Noble Trust creditors.



20. Accordingly, the Liquidator believes that approval of the Settlement Agreement is in the best interests of Noble Trust, its creditors, and all parties in interest. See, In re Liquidation of The Home Ins. Co., 154 N.H. 472, 489-90 (2006).

### **Filing and Service of Objections**

21. Objections to this motion, if any, must be in writing and filed with the Clerk of the Court (Office of the Clerk, Merrimack County Superior Court, 163 North Main Street, Concord, New Hampshire, 03302), and served upon the following parties so as to be received by the objection deadline imposed by the Court; *i.e.* any objections filed with the Court must also be either hand delivered to counsel or, if served by mail, then also transmitted electronically to counsel that same day:

- (a) attorneys for the Liquidator: (i) Office of the Attorney General, 33 Capitol Street, Concord, New Hampshire 03301-6397, Attn.: Peter C.L. Roth, Esq., fax: (603) 223-6269, email: peter.roth@doj.nh.gov, (ii) Sheehan Phinney Bass + Green Professional Association, 1000 Elm Street, P.O. Box 3701, Manchester, New Hampshire, 03105-3701, Attn.: Christopher M. Candon, Esq., fax: (603) 627-8121, email: ccandon@sheehan.com, and (iii) Drummond Woodsum, 84 Marginal Way, Suite 600, Portland, Maine 04101-2480, Attn: Benjamin E. Marcus, Esq., fax: (207) 772-3627, email: bmarcus@dwmlaw.com;
- (b) attorneys for Credit Suisse: (i) Proskauer Rose LLP, Eleven Times Square, New York, New York 10036, Attn.: John E. Failla, Esq., fax: (212) 969-2900, email: jfailla@proskauer.com, and (ii) Rath, Young and Pignatelli, P.C., One Capital Plaza, Concord, New Hampshire 03302, Attn.: Steven J. Lauwers, Esq., fax: (603) 225-9774, email: sjl@rathlaw.com;
- (c) attorneys for Wells Fargo: K&L Gates, LLP, 1000 N. West Street, Wilmington, DE 19801, Attn.: Scott E. Waxman, Esq., fax: (302) 416-7020, email: scott.waxman@klgates.com; and
- (d) counsel of record in this proceeding (whose names and addresses may be obtained from the Clerk's Office).

WHEREFORE, the Liquidator and Credit Suisse request that the Court enter an order granting this Motion and approving the Settlement Agreement, in substantially the same form submitted herewith as Exhibit B, and grant such other and further relief as is just.

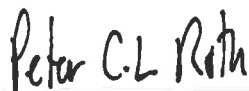
June 6, 2013

Respectfully submitted,

GLENN A. PERLOW, BANK  
COMMISSIONER OF THE STATE OF  
NEW HAMPSHIRE, AS LIQUIDATOR  
OF NOBLE TRUST COMPANY

By his attorneys,

ANN M. RICE,  
DEPUTY ATTORNEY GENERAL

 /amc

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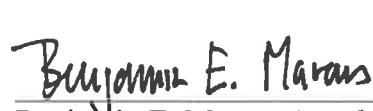
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FINANCE LLC, CREDIT SUISSE  
MANAGEMENT LLC, CSFB  
PRIVATE INSURANCE BROKERAGE  
LLC, CREDIT SUISSE LENDING TRUST  
(USA) 2, AND CREDIT SUISSE  
LENDING TRUST (USA) 3

By its attorneys,

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**ASSENTED TO:**

WELLS FARGO BANK, NA

By its attorneys,

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Scott E. Waxman, Esq.

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CREDIT SUISSE SECURITIES (USA)  
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(USA) 2, AND CREDIT SUISSE  
LENDING TRUST (USA) 3

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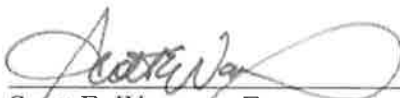
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**ASSENTED TO:**

WELLS FARGO BANK, NA

By its attorneys,



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Scott E. Waxman, Esq.  
K&L Gates, LLP  
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Wilmington, DE 19801

Joint Motion of Liquidator and Credit Suisse Assented To By  
Wells Fargo for Approval of Settlement Agreement and  
Mutual Release of Claims Regarding AXA Policies

# **EXHIBIT A**

**(Settlement Agreement)**

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS REGARDING  
AXA POLICIES**

This Settlement Agreement and Mutual Release of Claims Regarding AXA Policies (the "Agreement") is made by and between Credit Suisse Securities (USA) LLC, Credit Suisse Premium Finance LLC, Credit Suisse Management LLC, CSFB Private Insurance Brokerage LLC, Credit Suisse Lending Trust (USA) 2, and Credit Suisse Lending Trust (USA) 3 (collectively "Credit Suisse"), Wells Fargo Bank, N.A. ("Wells Fargo"), and Glenn A. Perlow, New Hampshire Bank Commissioner, in his capacity as liquidator of Noble Trust Company ("NTC") and Aegean Scotia Holdings, LLC ("Aegean") (the "Liquidator") (Credit Suisse, Wells Fargo, and the Liquidator shall each be referred to individually as a "Party" and collectively as the "Parties").

**RECITALS:**

WHEREAS, NTC was chartered by the New Hampshire Banking Department as a New Hampshire non-depository trust company on September 11, 2003;

WHEREAS, various individual NTC clients established irrevocable trusts for the purposes of purchasing life insurance policies from AXA Equitable Life Insurance Company ("AXA"), as to which trusts NTC served as trust protector and Wells Fargo served as trustee (the "Life Insurance Trusts");

WHEREAS, the Life Insurance Trusts each designated a separate trust as beneficiary, as to which NTC served as trustee (the "Beneficiary Trusts");

WHEREAS, NTC's principal, Colin Lindsey, a licensed insurance producer, directly or indirectly received producer commissions from AXA in connection with these life insurance policies that are the subject of this Agreement;

WHEREAS, Credit Suisse provided premium financing with respect to seven (7) life insurance policies issued by AXA on the lives of individual NTC clients, which policies are more particularly identified on Schedule A (the "Financed AXA Policies"), and which are also the subject of a separate settlement agreement between the Liquidator and AXA entered into contemporaneously with this Agreement (the "AXA-Liquidator Settlement Agreement");

WHEREAS, Credit Suisse also provided premium financing with respect to six (6) other life insurance policies on the lives of individual NTC clients, as more particularly identified on Schedule A, which were issued by PHL Variable Insurance Company (the "PHL Policies"), American National Insurance Company (the "American National Policies"), and Lincoln National Life Insurance Company (the "Lincoln National Policy"), and which are not subject to this Agreement;

WHEREAS, upon the Effective Date (as defined in Section 5 herein), five of the seven Financed AXA Policies will be released from NTC's estate (the "Released Policies"), and the

remaining two policies will be declared void *ab initio* (the "Voided Policies"), as set forth in Schedule A;

WHEREAS, to secure the obligations of the Life Insurance Trusts under the financing agreements, Credit Suisse received, among other things, collateral assignments of interests in each of the Financed AXA Policies by way of collateral assignment agreements with the Life Insurance Trusts (the "Collateral Assignments"), and certain limited guarantees executed by the grantors of the Life Insurance Trusts (the "Guarantees");

WHEREAS, AXA issued Insurer's Consent and Acknowledgements consenting in each case to the Collateral Assignments and agreeing to pay all amounts due under the Financed AXA Policies to Credit Suisse while the Collateral Assignments remained in effect;

WHEREAS, during an examination of NTC in early 2008, the New Hampshire Banking Department discovered certain "irregularities," which led to the then Commissioner appointing a Conservator for NTC and the commencement of liquidation and other related proceedings in the Merrimack County Superior Court on February 8, 2008 (the "Court");

WHEREAS, on February 8, the Court entered orders granting temporary and preliminary injunctive relief with respect to NTC, its assets as claimed by the Liquidator, its creditors, and other related matters;

WHEREAS, the Court appointed the then Commissioner as Liquidator on March 27, 2008, and has subsequently appointed his successors as Liquidator in accordance with applicable law, each of whom has served in such capacity since the dates of their respective appointments;

WHEREAS, the Liquidator asserts numerous rights and claims with respect to the life insurance policies issued to or in connection with trusts relating to NTC and its clients (including the Financed AXA Policies), including legal and equitable challenges and remedies with respect to the validity, extent, and priority of the claims and interests asserted by Credit Suisse, Wells Fargo and other parties; and that such policies should be liquidated for the benefit of NTC's estate and its creditors;

WHEREAS, Credit Suisse and Wells Fargo do not agree that the Financed AXA Policies constitute the business or property of the NTC estate or should be subject to liquidation therein, and further maintain and assert that they engaged in no fraudulent or other wrongful conduct with respect to the Financed AXA Policies;

WHEREAS, Credit Suisse, Wells Fargo, and the Liquidator entered into a series of tolling agreements with respect to the assertion of limitations and other similar defenses and have agreed to settle all claims and disputes with respect to the Financed AXA Policies, and, as between the Liquidator and Credit Suisse, all claims not directly related to the PHL Policies, American National Policies, and Lincoln National Policy, as set forth in this Agreement.

## AGREEMENTS:

NOW, THEREFORE, in consideration of the foregoing, the mutual promises made herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Agreement with Respect to the Released Policies. Credit Suisse, Wells Fargo (in its capacity as trustee of the relevant Life Insurance Trusts), and the Liquidator agree that, as of the Effective Date of this Agreement and the payment of the Settlement Amount set forth below, the Released Policies, together with all agreements relating to or in connection with such policies (including without limitation the Collateral Assignments, Guarantees and Insurer Consent and Acknowledgments), shall be released from the NTC estate, shall not constitute assets of the NTC estate, and shall not be subject to any provisions of the Order Appointing Liquidator or the Order Clarifying Order Appointing Liquidator.

The Liquidator acknowledges that Credit Suisse is entering into a separate agreement with AXA, (attached hereto as Exhibit A) concerning their respective rights relating to the Financed AXA Policies and all agreements relating to or entered into in connection with the Financed AXA Policies. The parties further acknowledge that the complete execution of that agreement, to which the Liquidator is not a party, shall constitute a condition precedent to this Agreement becoming effective; provided, however, that the Liquidator does not adopt or endorse any of the factual recitations or assertions in Exhibit A, and provided further that such qualification by the Liquidator shall not affect the rights or obligations of the Parties to each other under this Agreement.

Without limiting the applicability of Section 3 of this Agreement, the Liquidator agrees not to assert any claims, defenses, setoffs or other actions in connection with the Released Policies, or any agreements relating to or in connection with such policies (including without limitation the Collateral Assignments, Guarantees and Insurer Consent and Acknowledgments).

The Parties agree that the Liquidator, acting on behalf of NTC, shall, within ten (10) business days of the Effective Date of this Agreement (as defined in Section 5 hereof): (i) effect NTC's resignation as the trust protector of each Life Insurance Trust holding a Released Policy and (ii) appoint Ryan K. Crayne, of Winthrop & Weinstine, 225 South Sixth Street – Suite 3500, Minneapolis, Minnesota 55402 as the replacement trust protector in accordance with the terms of the applicable trust agreement.

The Parties further agree that, prior to resigning as protector of the Life Insurance Trusts holding the Released Policies and within ten (10) business days of the Effective Date of this Agreement, the Liquidator, acting on behalf of NTC, shall (1) create new trusts (in the form, or a substantially similar form, as attached as Exhibit B) to be the beneficiaries of the following Life Insurance Trusts, which own the Released Policies: [REDACTED], [REDACTED], The Florence B. Winston CS Trust, and The Lawrence P. O'Reilly CS Trust (the "New Beneficiary Trusts"); (2) designate the applicable "New Beneficiary Trusts" as the beneficiaries of the [REDACTED], [REDACTED], The Florence B. Winston CS Trust, and The Lawrence P. O'Reilly CS Trust pursuant to the provisions of the trust



agreements for those Life Insurance Trusts; and (3) name Ryan K. Crayne, of Winthrop & Weinstine, 225 South Sixth Street – Suite 3500, Minneapolis, Minnesota 55402 as the trustee for each of the New Beneficiary Trusts. With respect to the Released Policy owned by the Marilyn Reamer CS Trust, the Liquidator agrees to resign as trustee of the applicable Beneficiary Trust, and to appoint Ryan K. Crayne as replacement trustee, contemporaneously with resigning as trust protector of the Life Insurance Trust holding that Policy.

Once the actions required by this paragraph have been taken, the Liquidator will have no further power to take any action with respect to, or exercise any power over, any of the Released Policies, the Life Insurance Trusts owning the Released Policies, or the New Beneficiary Trusts of such Life Insurance Trusts. Upon the Effective Date of this Agreement, neither the Liquidator, the NTC estate, nor the prior Beneficiary Trusts (for which NTC served as trustee) will have any further right, title or interest in the Life Insurance Trusts or the Released Policies.

The Court's approval of this Agreement shall be deemed to authorize all actions required to be taken by this Agreement and the Parties' actions in entering into this Agreement. Neither the Liquidator, nor Credit Suisse, nor Wells Fargo, nor Mr. Crayne shall have or incur any liability to any person or entity with respect to any of the actions required to implement this Agreement or for having entered into this Agreement.

2. Agreement with Respect to the Voided Policies. Credit Suisse, Wells Fargo (in its capacity as trustee of the relevant Life Insurance Trusts), and the Liquidator agree that Credit Suisse's and Wells Fargo's interests in the Voided Policies, together with all agreements relating to or in connection with such policies (including without limitation the Collateral Assignments), shall be deemed to constitute assets of the NTC estate and such policies shall be unenforceable. Neither Credit Suisse nor Wells Fargo shall have any obligations to any person with respect to the Voided Policies, including with respect to the payment of any unpaid premiums that may have become due and payable on or after February 11, 2008. Without limiting the applicability of Section 3 of this Agreement, Credit Suisse and Wells Fargo each agree that they will not seek to enforce the Voided Policies or recover from any person, directly or indirectly, any of the premiums financed in connection with the Voided Policies or any obligations arising from any documents or agreements executed in connection with such premiums, whether pursuant to the loan agreements, the Collateral Assignments, or any other documents or agreements, including any and all personal guarantees. Neither Credit Suisse nor Wells Fargo shall have any further obligations with respect to the Voided Policies. The Order approving this Agreement shall expressly provide for the voiding *ab initio* of the Voided Policies and shall bar any claims by any Party or by any third party against such policies or against Credit Suisse or Wells Fargo or any Affiliate of Credit Suisse or Wells Fargo.

3. Releases.

(a) Release of Credit Suisse by the Liquidator. The Liquidator, for himself and on behalf of NTC and Aegean, and their respective predecessors, beneficiaries, creditors, legal representatives, successors and assigns (the "NTC Releasers"), release and forever discharge Credit Suisse and its Affiliates, subsidiaries, trustees, beneficiaries, shareholders, other similar parties, successors, assigns, partners, limited partners, agents, and present and former officers,

directors, employees, representatives, and attorneys (collectively, the "Credit Suisse Released Parties") from (1) any and all action or actions, cause or causes of action, suits, damages, setoffs, claims, demands, judgments, or executions, whether in contract, tort, or otherwise, whether known or unknown, whether accrued or un-accrued, and whether at law, by statute, or in equity, (collectively, "Claims") which the NTC Releasors now have or ever had against the Credit Suisse Released Parties arising out of or relating in any way to the Financed AXA Policies and (2) any and all other Claims which the NTC Releasors now have or ever had against the Credit Suisse Released Parties; provided, however, that the NTC Releasors do not, as part of this Release or Agreement, release any Claims (a) relating directly to the American National Policies, Lincoln National Policy, or the PHL Policies (collectively, the "Excluded Policies"), or the premiums, financing arrangements or other consideration paid or incurred in connection with any of the Excluded Policies, or (b) that the American National Policies, Lincoln National Policy, and PHL Policies and their proceeds (and any and all Claims relating directly thereto) constitute property of the liquidation estate. For purposes of this Section 3 (a) and (c) and the last sentence of Section 2, "Affiliate" of Credit Suisse means Credit Suisse AG and its shareholders, affiliates, subsidiaries, partnerships, successors, assigns, partners, limited partners, agents, officers, directors, employees, representatives, and attorneys, in each case of any of the foregoing.

(b) Release of Wells Fargo by Liquidator. The NTC Releasors release and forever discharge Wells Fargo and its affiliates, subsidiaries, trustees, beneficiaries, shareholders, other similar parties, successors, assigns, partners, limited partners, agents, and present and former officers, directors, employees, representatives, and attorneys (collectively, the "Wells Fargo Released Parties") from any and all Claims which the NTC Releasors now have or ever had against the Wells Fargo Released Parties arising out of or relating in any way to the Financed AXA Policies.

(c) Release of Liquidator by Credit Suisse. Credit Suisse, for itself, and for any and all of Credit Suisse's subsidiaries or affiliates, and for its predecessors, beneficiaries, creditors, legal representatives, successors and assigns (the "Credit Suisse Releasors"), releases and forever discharges the Liquidator, NTC, Aegean and their successors, assigns, partners, limited partners, agents, officers, directors, employees, representatives, and attorneys (collectively, the "NTC Released Parties") from (1) any and all Claims, which the Credit Suisse Releasors now have or ever had against the NTC Released Parties arising out of or relating to the Financed AXA Policies, including but not limited to the right to assert any claim or receive any distribution from NTC's or Aegean's respective estates regarding the Financed AXA Policies, except as set forth herein, whether relating to the AXA-Liquidator Settlement Agreement, the Released Policies or otherwise; and (2) any and all other Claims which the Credit Suisse Releasors now have or ever had against the NTC Released Parties; provided, however, that the Credit Suisse Releasors do not, as part of this Release or Agreement, release any Claims (a) relating directly to the American National Policies, Lincoln National Policy, or the PHL Policies (collectively, the "Excluded Policies"), or the premiums, financing arrangements or other consideration paid or incurred in connection with any of the Excluded Policies, or (b) that the American National Policies, Lincoln National Policy, and PHL Policies and their proceeds (and any and all Claims relating directly thereto) do not constitute property of the liquidation estate.

(d) Release of Liquidator by Wells Fargo. Wells Fargo, for itself and for its predecessors, beneficiaries, creditors, legal representatives, successors and assigns (the "Wells Fargo Releasers"), releases and forever discharges the Liquidator, NTC, Aegean and their successors, assigns, partners, limited partners, agents, and present and former officers, directors, employees, representatives, and attorneys (collectively, the "NTC Released Parties") from any and all Claims, which the Wells Fargo Releasers now have or ever had against the NTC Released Parties arising out of or relating to the Financed AXA Policies.

(e) Notwithstanding the releases set out in paragraphs (a), (b), (c) and (d) of this Section 3, each Party agrees that the other shall have the right to enforce the terms of this Agreement against the other Party.

4. Payment by Credit Suisse. Upon complete execution of this Agreement, Credit Suisse shall pay the sum of [REDACTED] (the "Settlement Funds") into an escrow account. Within ten (10) business days of the Effective Date, as defined in paragraph 5 below, Credit Suisse will release this [REDACTED] from escrow and direct that it be paid to an account designated by the Liquidator.

5. Effective Date: Conditions to Obligations of the Parties. This Agreement shall become effective on the date that all of the conditions set forth in the paragraph below have been fully satisfied (the "Effective Date"):

(a) Court Approval of the Agreement and its implementation by order on joint petition of Credit Suisse, Wells Fargo and the Liquidator, upon an order substantially in the form attached hereto as Exhibit C, shall have occurred;

(b) Credit Suisse shall have entered into a separate settlement agreement with AXA subject only to the conditions on effectiveness contained in that agreement (which conditions shall include the execution and approval of this Agreement), which shall resolve all claims between Credit Suisse and AXA with respect to the Financed AXA Policies on terms acceptable to Credit Suisse; and

(c) Court Approval of the AXA-Liquidator Settlement Agreement shall have occurred.

(d) For purposes of this Agreement, "Court Approval" shall be deemed to occur upon the date that the order(s) approving this Agreement and the AXA-Liquidator Settlement Agreement in the Liquidation Proceeding shall become final and no longer subject to appeal, or in the event of an appeal shall have been affirmed after all appeals therefrom have been exhausted.

6. Representations and Warranties. Each Party represents and warrants to the other that: (a) it is the holder of all claims, rights and obligations released hereunder; (b) none of such claims, rights or obligations, or any interest therein has been transferred by such party; (c) it has all necessary authority to execute this Agreement (subject, as to the Liquidator, to Court approval); (d) upon the Agreement being executed and delivered, and upon Court Approval being obtained and the conditions set forth herein otherwise satisfied, it will constitute the legally binding obligation of such Party, enforceable against such Party in accordance with its terms;

and (e) it has not relied upon any statement, representation or promise, oral or written, of any other Party to this Agreement except as expressly set forth herein. The Liquidator further represents and warrants that he is entering into this Agreement on behalf of himself and in his capacity as the legal representative of NTC and Aegean and any predecessors, successors and assigns of NTC and Aegean in accordance with the provisions of RSA 395:9, and that (subject to Court Approval) the Liquidator has all necessary legal authority to execute and perform this Agreement on behalf of NTC and Aegean and any predecessors, successors and assigns of NTC and Aegean.

7. No Admission by Any Party. This Agreement is intended solely to expeditiously resolve the matters addressed herein, and it shall not be construed as an admission by any Party to this Agreement, or its heirs, assigns, successors, representatives, agents, officers, directors, or shareholders, of the validity of the claims of any other Party to this Agreement.

8. Binding Effect. This Agreement, and all covenants and releases set forth herein, shall be binding upon and shall inure to the benefit of the respective Parties hereto, their legal successors, heirs, assigns, partners, representatives, agents, attorneys, officers, directors and shareholders, as the case may be.

9. Entire Agreement. This Agreement constitutes the complete understanding between the Parties and supersedes any and all prior agreements, promises, or inducements, no matter what form, concerning its subject matter. No promises or agreements made subsequent to the execution of this Agreement by the Parties shall be binding unless reduced to writing and signed by authorized representatives of all Parties. Each Party represents that it has carefully read and fully understands all of the provisions of this Agreement, that it has been given the opportunity to fully discuss the contents of this Agreement with independent counsel of its choice and has done so, and that by executing this Agreement, each Party relies entirely on its own judgment and the advice of its respective counsel and not upon any representation, statement or promise, not otherwise set forth or described in this Agreement, of any of the other Parties, their attorneys or other individual or entity, and that it is voluntarily and without duress entering into this Agreement.

10. Interpretation. The language of all parts of the Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly construed for or against any Party. The Parties agree that this Agreement shall be deemed to have been jointly drafted for purposes of applying any rules of construction.

11. Counterparts. This Agreement may be executed in one or more counterparts and by the Parties hereto on separate counterparts, and each of such counterparts shall be considered an original document, but all of such counterparts together shall constitute one and the same Agreement.

*[Signature pages follow]*

In Witness Whereof, the Parties, having read the foregoing Settlement Agreement and Mutual Release of Claims Regarding AXA Policies and knowing and understanding its content, have executed the same as of the date indicated,

Glenn A. Perlow, New Hampshire Bank Commissioner, in his capacity as Liquidator of Noble Trust Company and Aegean-Scotia Holdings LLC,

By:  \_\_\_\_\_  
[ ]

Date: 3/25/13

Credit Suisse Lending Trust (USA) 2

By: \_\_\_\_\_  
[ ]

Date: \_\_\_\_\_

Credit Suisse Lending Trust (USA) 3

By: \_\_\_\_\_  
[ ]

Date: \_\_\_\_\_

Credit Suisse Securities (USA) LLC

By: \_\_\_\_\_  
[ ]

Date: \_\_\_\_\_

Credit Suisse Premium Finance LLC

By: \_\_\_\_\_  
[ ]

Date: \_\_\_\_\_

In Witness Whereof, the Parties, having read the foregoing Settlement Agreement and Mutual Release of Claims Regarding AXA Policies and knowing and understanding its content, have executed the same as of the date indicated.

Glenn A. Perlow, New Hampshire Bank Commissioner, in his capacity as Liquidator of Noble Trust Company and Aegean Scotia Holdings LLC.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Credit Suisse Lending Trust (USA) 2

By: Erik R. Starkman Erik R. Starkman  
Assistant Vice President

Date: 3-21-13

Credit Suisse Lending Trust (USA) 3

By: Erik R. Starkman Erik R. Starkman  
Assistant Vice President

Date: 3-21-13

Credit Suisse Securities (USA) LLC

By: Adam Delligatti Adam Delligatti, Director

Date: 3/21/13

Credit Suisse Premium Finance LLC

By: Joshua Papir Joshua Papir, Vice President

Date: 3/21/13

Credit Suisse Management LLC

By: Joshua Papir  
Joshua Papir, Vice PresidentDate: 3/21/13

CSFB Private Insurance Brokerage LLC

By: SIV. PL  
PresidentDate: 3/21/13Wells Fargo Bank, N.A., as trustee for [REDACTED], [REDACTED]  
The Marilyn Reamer CS Trust, The Richard S. Truesdale CS Trust, The Clifton Marshall CS  
Trust, The Florence B. Winston CS Trust, and The Lawrence P. O'Reilly CS Trust 2By: Erik R. Starkman  
Erik R. Starkman  
Assistant Vice PresidentDate: 3-21-13

Wells Fargo Bank, N.A.

By: Erik R. Starkman  
Erik R. Starkman  
Assistant Vice PresidentDate: 3-21-13

## SCHEDULE A

### Financed Policies

#### 1. Released Policies

- (a) the [REDACTED] issued by AXA, Policy Number 157207662;
- (b) the [REDACTED] issued by AXA, Policy Number 157209471;
- (c) the Marilyn Reamer Policy issued by AXA, Policy Number 157213815;
- (d) the Florence Winston Policy issued by AXA, Policy Number 157222269; and
- (e) the Lawrence O'Reilly Policy issued by AXA, Policy Number 157223089.

#### 2. Voided Policies

- (a) the Richard Truesdale Policy issued by AXA, Policy Number 157218193; and
- (b) the Clifton Marshall Policy issued by AXA, Policy Number 157215761.

#### 3. PHL Policies

- (a) the [REDACTED] issued by PHL Variable, Policy Number 97522639;
- (b) the Ronald Kaufman Policy issued by PHL Variable, Policy Number 97521867; and
- (c) the Harry Nicklaus Policy issued by PHL Variable, Policy Number 97522837.

#### 4. American National Policies

- (a) the Charles Reeder Policy issued by American National, Policy Number U0590606; and
- (b) the Joseph Collie Policy issued by American National, Policy Number U0590469.

#### 5. Lincoln National Policy

- (a) the Ronald Robinson Policy issued by Lincoln National, Policy Number JJ7013496.



Settlement Agreement and Mutual Release of  
Claims Regarding AXA Policies

# **EXHIBIT A**

**(Mutual Release and Undertaking)**

### Mutual Release and Undertaking

WHEREAS, AXA Equitable Life Insurance Company ("AXA Equitable") issued the following life insurance policies: [REDACTED] (policy no. 157 207 662) (the "[REDACTED]"), [REDACTED] (policy no. 157 209 471) (the "[REDACTED]"), Clifton Marshall (policy no. 157 215 761) (the "Marshall Policy"); Florence Winston (policy no. 157 222 269) (the "Winston Policy"); Lawrence O'Reilly (policy no. 157 223 089) (the "O'Reilly Policy"); Marilyn Reamer (policy no. 157 213 815) (the "Reamer Policy"); and Richard Truesdale (policy no. 157 218 193) (the "Truesdale Policy") (collectively, the "AXA Equitable Policies"); and

WHEREAS, the [REDACTED] was issued to the [REDACTED] (the "[REDACTED]"); and

WHEREAS, the [REDACTED] was issued to the [REDACTED] (the "[REDACTED]"); and

WHEREAS, the Marshall Policy was issued to the Clifton Marshall CS Trust (the "Marshall CS Trust"); and

WHEREAS, the Winston Policy was issued to the Florence B. Winston CS Trust (the "Winston CS Trust"); and

WHEREAS, the O'Reilly Policy was issued to the Lawrence P. O'Reilly CS Trust 2 (the "O'Reilly CS Trust"); and

WHEREAS, the Reamer Policy was issued to the Marilyn Reamer CS Trust (the "Reamer CS Trust"); and

WHEREAS, the Truesdale Policy was issued to the Richard S. Truesdale CS Trust (the "Truesdale CS Trust"); and

WHEREAS, Wells Fargo Bank N.A. ("Wells Fargo") serves as trustee of each of the [REDACTED], the [REDACTED], the Marshall CS Trust, the Winston CS Trust, the O'Reilly CS Trust, the Reamer CS Trust, and the Truesdale CS Trust (collectively, the "CS Trusts"); and

WHEREAS, the premiums for the [REDACTED], the [REDACTED], the Reamer Policy, and the Truesdale Policy were provided by Credit Suisse Lending Trust (USA) 2 under premium financing arrangements disclosed to AXA Equitable prior to the respective effective dates of those policies; and

WHEREAS, as part of those premium financing arrangements, Credit Suisse Lending Trust (USA) 2 received as collateral an assignment of all claims, options, privileges, rights, title and interest in, to and under the [REDACTED], the [REDACTED], the Reamer Policy, and the Truesdale Policy from the [REDACTED], the [REDACTED], the Reamer CS Trust, and the Truesdale CS Trust, respectively; and

WHEREAS, the premiums for the Marshall Policy, the Winston Policy, and the O'Reilly Policy were provided by Credit Suisse Lending Trust (USA) 3 (together with Credit Suisse Lending Trust (USA) 2, "Credit Suisse") under premium financing agreements disclosed to AXA Equitable prior to the respective effective dates of those policies; and

WHEREAS, as part of those premium financing arrangements, Credit Suisse Lending Trust (USA) 3 received as collateral an assignment of all claims, options, privileges, rights, title and interest in, to and under the Marshall Policy, the Winston Policy, and the O'Reilly Policy, from the Marshall CS Trust, the Winston CS Trust, and the O'Reilly CS Trust, respectively; and

WHEREAS, the AXA Equitable Policies have been claimed to be included within the liquidation estate being administered by Ronald A. Wilbur, the Liquidator of Noble Trust Company and Aegean Holdings, LLC pursuant to a March 30, 2008 Order Appointing Liquidator and a June 11, 2008 Order Clarifying Order Appointing Liquidator issued in *In re Liquidation of Noble Trust Company*, Docket No. 08-E-0053 by the Superior Court of Merrimack County, New Hampshire (the "Liquidation Proceedings"); and

WHEREAS, AXA Equitable and Credit Suisse have been and continue to be united in the belief that the Released Policies (as defined herein) were not properly included within the liquidation estate and the belief that the Released Policies are valid; and

WHEREAS, AXA Equitable has, with the consent of the Liquidator and based upon the allegations by the Liquidator that the AXA Equitable Policies may have been invalidly procured, initiated certain actions by service of a writ of summons issued by the Superior Court of Merrimack County, New Hampshire, seeking judicial declarations as to the validity of the AXA Equitable Policies (collectively, the "Litigation"); and

WHEREAS, AXA Equitable and the Liquidator have reached a settlement agreement (the "AXA Equitable – Liquidator Settlement Agreement") pursuant to which the Truesdale Policy and the Marshall Policy (the "Void Policies") shall be deemed void *ab initio* and the [REDACTED], the [REDACTED], the Reamer Policy, the Winston Policy, and the O'Reilly Policy (the "Released Policies") shall be released from the liquidation estate, and will no longer be subject to the Order Appointing Liquidator and the Order Clarifying Order Appointing Liquidator, and will return to in force and premium paying status, being fully enforceable subject to the terms and conditions of those policies; and

WHEREAS, Credit Suisse and the Liquidator have reached a settlement agreement resolving all disputes between Credit Suisse and the Liquidator as to the AXA Equitable Policies (the "Credit Suisse – Liquidator Agreement");

NOW, THEREFORE, for and in consideration of the foregoing recitals, and the mutual covenants, terms and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, AXA Equitable, on the one hand, and Credit Suisse and Wells Fargo, as trustee of each of the CS Trusts, on the other hand, agree as follows:

1. AXA Equitable, on behalf of itself and each of its respective predecessors, successors, heirs, administrators, assigns, partners, officers, directors, employees, agents, representatives, trustees, attorneys, affiliates and all affiliated companies, hereby irrevocably and unconditionally releases and forever discharges Credit Suisse and Wells Fargo, as trustee of each of the CS Trusts, and their respective predecessors, successors, heirs, administrators, assigns, partners, officers, directors, employees, agents, representatives, trustees, attorneys, beneficiaries, parents, affiliates and all affiliated companies, and all persons acting by, through, under, or in concert with them, from any and all actions, causes of action, suits, debts, liens, contracts, rights, agreements, obligations, promises, liabilities, claims, demands, damages, controversies, losses, costs, and expenses, including attorneys' fees and costs of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, which it now has, owns, holds, or claims or at any time heretofore had, owned, held, or claimed, in connection with, arising out of, or in any way related to the Void Policies, or any agreement related to or in connection with the Void Policies, including but not limited to loan agreements and collateral assignments. It is expressly understood that the releases set forth in this paragraph only relate to the Void Policies and any agreement related to or in connection with the Void Policies, and do not extend to any other conduct of Credit Suisse and/or Wells Fargo, as trustee of each of the CS Trusts.

2. Credit Suisse and Wells Fargo, as trustee of each of the CS Trusts, on behalf of themselves and each of their respective predecessors, successors, heirs, administrators, assigns, partners, officers, directors, employees, agents, representatives, trustees, attorneys, beneficiaries, parents, affiliates and all affiliated companies, hereby irrevocably and unconditionally release and forever discharge AXA Equitable, and its respective predecessors, successors, heirs, administrators, assigns, partners, officers, directors, employees, agents, representatives, trustees, attorneys, affiliates and all affiliated companies, and all persons acting by, through, under, or in concert with it, as well as the producers and writing agents on each of the Void Policies, and any other individual or entity to which AXA Equitable paid any commissions or compensation on or related to any of the Void Policies, and any and all other individuals and entities (other than the Liquidator, Noble Trust Company, and/or Aegean Holdings, LLC), from any and all actions, causes of action, suits, debts, liens, contracts, rights, agreements, obligations, promises, liabilities, claims, demands, damages, controversies, losses, costs, and expenses, including attorneys' fees and costs of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, which they now have, own, hold, or claim or at any time heretofore had, owned, held, or claimed, in connection with, arising out of, or in any way related to the Void Policies, or any agreement related to or in connection with the Void Policies, including but not limited to loan agreements and collateral assignments. It is expressly understood that the releases set forth in this paragraph only relate to the Void Policies and any agreement related to or in connection with the Void Policies, and do not extend to any other conduct of AXA Equitable.

3. AXA Equitable, Credit Suisse and Wells Fargo, as trustee of each of the CS Trusts, hereby expressly agree that the Released Policies, as well as all agreements related to or in connection with the Released Policies, including but not limited to loan agreements and collateral assignments, shall be fully enforceable according to their terms, except as otherwise set forth herein.

4. AXA Equitable, on behalf of itself and each of its respective predecessors, successors, heirs, administrators, assigns, partners, officers, directors, employees, agents, representatives, trustees, attorneys, affiliates and all affiliated companies, hereby agrees and covenants to Credit Suisse and Wells Fargo, as trustee of each of the CS Trusts, and their respective predecessors, successors, heirs, administrators, assigns, partners, officers, directors, employees, agents, representatives, trustees, attorneys, affiliates and all affiliated companies, and all persons acting by, through, under, or in concert with them, that it will not initiate any action seeking to rescind or otherwise challenging the validity of any Released Policy, or otherwise assert the purported invalidity of any Released Policy as a defense to any claim, upon any basis, including, but not limited to, a lack of insurable interest at the inception of, or any fraud or misrepresentations involved in the procurement of the applicable Released Policy, other than those bases explicitly stated in the incontestability clause of the applicable Released Policy.

5. Credit Suisse and Wells Fargo, as trustee of each of the CS Trusts, on behalf of themselves and each of their respective predecessors, successors, heirs, administrators, assigns, partners, officers, directors, employees, agents, representatives, trustees, attorneys, affiliates and all affiliated companies, hereby agree and covenant to AXA Equitable, and its predecessors, successors, heirs, administrators, assigns, partners, officers, directors, employees, agents, representatives, trustees, attorneys, affiliates and all affiliated companies, and all persons acting by, through, under, or in concert with it, that they will not initiate any action seeking to rescind any Released Policy or otherwise seek to have any such policy to be determined to be void, and they will not seek to obtain a return of premium on any Released Policy, or otherwise assert the purported invalidity of any Released Policy, upon any basis, including, but not limited to, a lack of insurable interest at the inception of, or any fraud or misrepresentations involved in the procurement of the applicable Released Policy, other than those bases explicitly stated in the incontestability clause of the applicable Released Policy.

6. This Mutual Release and Undertaking is expressly conditioned upon the entry of orders by the Court in the Liquidation Proceedings approving (i) the AXA Equitable – Liquidator settlement agreement to which this Mutual Release and Understanding is attached as an exhibit, and (ii) the Credit Suisse – Liquidator settlement agreement, which orders shall have become final and no longer subject to appeals, or in the event of appeals, shall have been affirmed after all appeals therefrom have been exhausted (the “Effective Date”).

7. Credit Suisse shall cooperate with the Liquidator as set forth in the Credit Suisse – Liquidator Agreement to remove Noble Trust from having any role with respect to the owner or beneficiary of any of the Released Policies. All of these removals of the Liquidator shall be completed within ten (10) business days of the Effective Date.

8. Within ten (10) business days of the Effective Date, Credit Suisse shall pay to AXA Equitable, with regard to each Released Policy, the amount of premium and other applicable costs indicated in the attached Annex No. 1. The attached Annex No. 1 lists the minimum amount of premium and other applicable costs required to ensure that each respective Released Policy will remain in full force and effect through the date specified in Annex 1 for each such policy. AXA Equitable shall provide Credit Suisse an illustration for each Released Policy within ten days of AXA Equitable receiving the payment described in this paragraph from Credit Suisse for each Released Policy.

Further, within five (5) business days of the Effective Date, with regard to each Released Policy, AXA Equitable will provide Credit Suisse with, if applicable, written notice of the amount of premium and other applicable costs in excess of the amounts set forth in the attached Annex No. 1 that are required to ensure that each respective Released Policy will remain in full force and effect through a date sixty (60) days after the Effective Date. On or before the thirtieth day after the Effective Date, Credit Suisse shall, with regard to each Released Policy, pay to AXA Equitable the amount indicated on the notice provided by AXA Equitable.

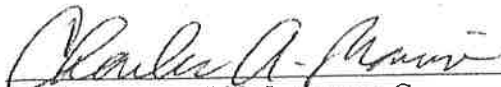
9. AXA Equitable, on behalf of itself and each of its respective predecessors, successors, heirs, administrators, assigns, partners, officers, directors, employees, agents, representatives, trustees, attorneys, affiliates and all affiliated companies, hereby agrees and covenants not to file or otherwise pursue the Litigation. Within 10 business days of the Effective Date, AXA Equitable will take any action reasonably necessary to dismiss the Litigation with prejudice.

10. This Agreement may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Faxed or email PDF signatures shall be sufficient to bind the signing Party, but each Party shall promptly furnish to each of the other Parties an original signature page.

**[SIGNATURES TO FOLLOW]**

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement as of the date shown next to its signature.

Dated: 4/3, 2013

  
AXA Equitable Life Insurance Company  
By: Charles A. Marino  
Title: Executive Director and Chief Actuary



Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Credit Suisse Lending Trust (USA) 2  
By: \_\_\_\_\_  
Title: \_\_\_\_\_


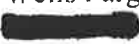
Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Credit Suisse Lending Trust (USA) 3  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Wells Fargo Bank NA,   
  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Wells Fargo Bank NA,   
  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Wells Fargo Bank NA, as trustee of the Clifton  
Marshall CS Trust  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement as of the date shown next to its signature.

Dated: \_\_\_\_\_, 2013

AXA Equitable Life Insurance Company

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: January 18, 2013



Credit Suisse Lending Trust (USA) 2

By: Wells Fargo Bank, NA, solely as Minnesota Trustee

By: \_\_\_\_\_

Erik R. Starkman

Title: \_\_\_\_\_

Assistant Vice President

Dated: January 18, 2013



Credit Suisse Lending Trust (USA) 3

By: Wells Fargo Bank, NA, solely as Minnesota Trustee


By: \_\_\_\_\_

Erik R. Starkman

Title: \_\_\_\_\_

Assistant Vice President

Dated: January 18, 2013



Wells Fargo Bank NA, \_\_\_\_\_

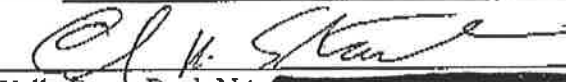
By: \_\_\_\_\_

Erik R. Starkman

Title: \_\_\_\_\_

Assistant Vice President

Dated: January 18, 2013



Wells Fargo Bank NA, \_\_\_\_\_

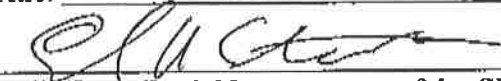
By: \_\_\_\_\_

Erik R. Starkman

Title: \_\_\_\_\_

Assistant Vice President

Dated: January 18, 2013



Wells Fargo Bank NA, as trustee of the Clifton Marshall CS Trust

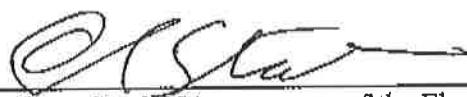
By: \_\_\_\_\_

Erik R. Starkman

Title: \_\_\_\_\_

Assistant Vice President



Dated: January 18, 2013  
Wells Fargo Bank NA, as trustee of the Florence B.

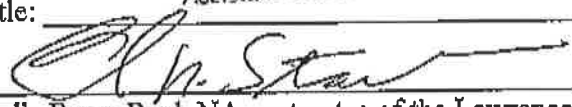
Winston CS Trust

By: \_\_\_\_\_

Erik R. Stadman

Title: \_\_\_\_\_

Assistant Vice President

Dated: January 18, 2013  
Wells Fargo Bank NA, as trustee of the Lawrence


P. O'Reilly CS Trust 2

By: \_\_\_\_\_

Erik R. Stadman

Title: \_\_\_\_\_

Assistant Vice President

Dated: January 18, 2013  
Wells Fargo Bank NA, as trustee of the Marilyn

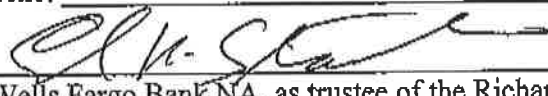
Reamer CS Trust

By: \_\_\_\_\_

Erik R. Stadman

Title: \_\_\_\_\_

Assistant Vice President

Dated: January 18, 2013  
Wells Fargo Bank NA, as trustee of the Richard S.

Truesdale CS Trust

By: \_\_\_\_\_

Erik R. Stadman

Title: \_\_\_\_\_

Assistant Vice President

Annex No. 1

<u>Policy Number</u>	<u>Name of Insured</u>	<u>Premium Payment Required</u>
157 207 662	[REDACTED]	\$344,491.85 (5.21.13)
157 209 471	[REDACTED]	\$1,035,513.57 (7.2.13)
157 222 269	Florence Winston	\$371,693.09 (10.16.13)
157 223 089	Lawrence O'Reilly	\$1,130,316.68 (9.1.13)
157 213 815	Marilyn Reamer	\$148,462.24 (8.19.13)

Settlement Agreement and Mutual Release of  
Claims Regarding AXA Policies

# **EXHIBIT B**

**(Trust Documents)**

## **THE FLORENCE B. WINSTON IRREVOCABLE TRUST #2**

Ryan K. Crayne hereby declares that any and all property, real or personal, that may be transferred to him as Trustee hereunder, and all investments and reinvestments thereof, all additions thereof and all substitutions therefor (referred to herein as the "trust property") shall be held, IRREVOCABLY IN TRUST, as follows:

FIRST: This trust shall be known as "The Florence B. Winston Irrevocable Trust #2."

SECOND: Any person may make additions to the principal of any trust under this trust instrument by lifetime gift, will, designation of the Trustee as beneficiary or otherwise.

THIRD: At any time within one hundred eighty days after this trust instrument is executed, the majority in number of Florence B. Winston's descendants who are living and competent may remove Ryan K. Crayne as the Trustee by a written notice delivered to Ryan K. Crayne; provided, however, that no such removal shall become effective until a successor Trustee has accepted such office.

FOURTH: The following provisions apply to the Trustee:

- (a) Each Trustee serving hereunder shall be entitled to receive reasonable compensation for services performed.
- (b) No bond or other security shall be required from any Trustee. Any Trustee may act without qualifying before any court or filing with any court any inventory, accounting or other report relating to the administration of the trust unless otherwise required by law to do so.
- (c) No person or institution dealing with the Trustee shall be required to see to the application of any money or other property delivered to the Trustee or to inquire into the necessity or propriety of any action taken or not taken by the Trustee.
- (d) The Trustee shall furnish upon request, at least annually, accounts of receipts and disbursements of trust property to each beneficiary to whom income of the trust could then be paid who is not under any legal disability and to each person (other than a governmental authority) having custody of any such beneficiary who is under a legal disability.

FIFTH: Except as otherwise provided above, the trust property shall be held, administered and disposed of as provided in Articles II through X, Paragraphs A through F of Article XI, Articles XII through XVII and Exhibit A of The Florence B. Winston Irrevocable Trust dated September 24, 2007 (the "2007 Trust"). A copy of the 2007 Trust is attached hereto, and Articles II through X, Paragraphs A through F of Article XI, Articles XII through XVII and Exhibit A of the 2007 Trust are incorporated herein by reference in their entirety. In said

incorporated provisions, all first-person pronouns and the word "Grantor" shall refer to Florence B. Winston, the Grantor of the 2007 Trust, and in Paragraph B of Article VI, the reference to "the date of execution of this trust instrument" shall mean September 24, 2007.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Ryan K. Crayne, Trustee

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Ryan K. Crayne.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## CHANGE OF BENEFICIARY

TO: Wells Fargo Bank, N.A., Trustee of The Florence B. Winston CS Trust (the "Trust")

Under paragraph (c) of Article XI of the Trust, I, in my capacity as Protector of the Trust, am given the power to change the Beneficiary of the Trust. I hereby exercise such power by designating The Florence B. Winston Irrevocable Trust #2, dated \_\_\_\_\_, 2013, as the new Beneficiary of the Trust.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Glenn A. Perlow, Bank Commissioner of the  
State of New Hampshire, as Liquidator of  
Noble Trust Company and Protector of The  
Florence B. Winston CS Trust

The undersigned hereby acknowledges receipt of the foregoing Change of Beneficiary this  
\_\_\_\_\_ day of \_\_\_\_\_, 2013.

WELLS FARGO BANK, N.A., as Trustee  
of The Florence B. Winston CS Trust

By: \_\_\_\_\_  
Title: \_\_\_\_\_

THE FLORENCE B. WINSTON CS TRUST (the "Trust")

Glenn A. Perlow, Bank Commissioner of the State of New Hampshire, as duly appointed Liquidator (the "Liquidator") of Noble Trust Company ("Noble"), acting on behalf of Noble pursuant to authority granted by the Merrimack County Superior Court by Order dated \_\_\_\_\_, 2013 entered in the civil proceeding entitled *In the Matter of the Liquidation of Noble Trust Company* (Docket No. 08-E-0053), and in accordance with the provisions of paragraph (j) of Article XI of the Trust, hereby effects the resignation of Noble as the Protector of the Trust, and appoints Ryan K. Crayne as the successor Protector of the Trust.

Dated: \_\_\_\_\_, 2013

GLENN A. PERLOW, BANK  
COMMISSIONER OF THE STATE OF  
NEW HAMPSHIRE, AS LIQUIDATOR  
OF NOBLE TRUST COMPANY

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Acceptance by Successor Protector

The undersigned hereby accepts his appointment as successor Protector of the Trust.

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Ryan K. Crayne

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IRREVOCABLE  
TRUST AGREEMENT

THIS IRREVOCABLE TRUST AGREEMENT is entered into this 24 day of September, 2007, by and between

FLORENCE B. WINSTON, who, as Grantor, is referred to in this trust instrument in the first person; and

NOBLE TRUST COMPANY who, as Trustee, is referred to in this trust instrument as the "Trustee."

For convenience, this trust shall be known as THE FLORENCE B. WINSTON IRREVOCABLE TRUST dated September 24, 2007 and it shall be sufficient that it be referred to as such in any deed, assignment, beneficiary designation, bequest, or devise.

ARTICLE I  
TRUST PROPERTY

A. Original Trust Property. I have delivered to the Trustee as the original trust property the sum of Ten Dollars (\$10.00), receipt of which the Trustee acknowledges. The Trustee agrees to hold the original trust property, any additions thereto, and any investments and reinvestments thereof, under the terms of this trust instrument. The Trustee shall not be required to invest any property contributed to the Trust, including investing such contributed property in an account or investment that produces income, and shall be authorized to hold such property in the form in which it was originally contributed.

B. Additions to Trust Property. I or any other person may make additions to the principal of any trust under this trust instrument by lifetime gift, will, designation of the Trustee as beneficiary or otherwise.

ARTICLE II  
DISPOSITION OF TRUST PROPERTY DURING  
GRANTOR'S LIFETIME

During my lifetime the trust property shall be disposed of as provided in this Article.

A. Demand Rights. I grant the following rights to my descendants:

1. If any transfers which are treated as gifts under the federal gift tax law are made, directly or indirectly, to this trust during the period prior to my death, each then living child of mine shall thereupon have the absolute right and power (hereinafter referred to as the "demand right") to demand the immediate distribution from this trust of an amount, which the Trustee in its discretion may satisfy in cash or in property of equivalent current fair market value or both, equal to the greater of:



a. The amount of such transfer divided by the total number of children of mine having such demand right, provided such resulting amount does not exceed the amount specified in Section 2514(e)(1) of the Internal Revenue Code of 1986, as amended (the "Code") (currently Five Thousand Dollars (\$5,000.00), adjusted to reflect any subsequent amendments to such Code Section), and if such resulting amount does exceed the amount specified in Code Section 2514(e)(1), then the amount subject to withdrawal under this subparagraph shall be an amount equal to the amount specified in such Code Section; and

b. An amount equal the amount specified in Code Section 2514(e)(2) (currently five (5%) percent of the aggregate value of the trust principal, adjusted to reflect any subsequent amendments to such Code Section) at the time of such transfer.

2. If any transfer to this trust exceeds the demand rights available to my children with respect to such transfer, or if none of my children are then living at the time of a transfer, each then living descendant of mine (other than a child of mine) shall have a demand right equal to the greater of:

a. The amount of such transfer divided by the total number of descendants of mine (other than children of mine) having such demand right, provided such resulting amount does not exceed the amount specified in Code Section 2514(e)(1) (currently Five Thousand Dollars (\$5,000.00), adjusted to reflect any subsequent amendments to such Code Section), and if such resulting amount does exceed the amount specified in Code Section 2514(e)(1), then the amount subject to withdrawal under this subparagraph shall be an amount equal to the amount specified in such Code Section; and

b. An amount equal the amount specified in Code Section 2514(e)(2) (currently five (5%) percent of the aggregate value of the trust principal, adjusted to reflect any subsequent amendments to such Code Section) at the time of such transfer.

3. To the extent that a demand right granted under paragraph A of this Article has not been exercised in writing by a beneficiary with a demand right by the thirtieth (30th) day after the transfer to this trust giving rise to such demand right, it shall thereupon lapse, and such beneficiary having the demand right shall forever cease to have any further demand right with respect to such transfer to this trust.

4. Such demand right shall be exercisable by a beneficiary with a demand right by notification to the Trustee, provided that if any beneficiary is then under any legal disability of any kind, such demand right may be exercised by the guardian of his or her estate (other than myself), if any, and if none, such other individual who the Trustee shall deem appropriate, acting solely in the behalf of such beneficiary in making such demand. Any such distributions shall be received by such guardian or individual solely for the benefit and use of such beneficiary.

5. Each and every time any transfer is made that would give rise to a demand right, the Trustee, upon receipt of the assets which are the subject of the transfer, or upon receipt of written notification that such transfer has been completed if such transfer has been made indirectly, shall promptly give notice of such transfer to any beneficiary with a demand right, and

if any such beneficiary is then under any legal disability, the Trustee shall also give such notice to the guardian of his or her estate (other than myself), if any, and, if none, to such other individual who the Trustee shall deem appropriate. If any beneficiary with a demand right is then acting as Trustee hereunder, such beneficiary shall be deemed to have received the notice required to be given by the Trustee as of the date of such transfer.

6. Upon timely receipt by the Trustee of notice from a beneficiary that a demand right is to be exercised, such demand right shall be forthwith honored and satisfied by such Trustee as provided above, and to this end such Trustee shall, at all times while such a demand right is outstanding and exercisable, retain sufficient transferable assets in the trust, if possible, to satisfy such demand right should it be exercised. To satisfy a demand right made by a beneficiary, the Trustee shall be authorized to distribute a share of the interest in any life insurance policy held by it hereunder and shall also be authorized to borrow against the cash value of any such policy to obtain cash for such distribution.

7. Any individual making a transfer to this trust with respect to such transfer shall have the right, by a written instrument filed with the Trustee, (1) to exclude any beneficiary who would otherwise have a demand right over such addition from exercising such demand right, (2) to increase or decrease the limitation on the value of the property subject to the demand right with respect to any beneficiary, except that the amount subject to all demand rights resulting from such addition shall not exceed the amount of such addition, or (3) to change the period during which any demand right resulting from such addition may be exercised.

B. Disposition of Balance of Trust Property. The trust property other than that which is subject to withdrawal under Paragraph A of this Article shall be held in trust during my lifetime. The Trustee may, in the sole discretion of the Trustee, distribute income and principal of the trust at any time, and from time to time, to and among my descendants during my lifetime.

### **ARTICLE III DISTRIBUTION OF TRUST PROPERTY UPON GRANTOR'S DEATH**

Upon my death the Trustee shall hold the trust property (other than property that is payable to the Trustee as a result of my death and directed to be disposed of as a part of a specific trust under this trust instrument) in trust (the "Survivor's Trust") and shall administer and distribute the funds to the beneficiaries named in accordance with Exhibit A, attached hereto and incorporated herein by reference.

### **ARTICLE IV CONTINGENT BENEFICIARIES**

If none of the beneficiaries named in the Survivor's Trust survive me, the Trustee shall distribute the trust property to the person or persons who would have been entitled to receive my personal property under the laws providing for the distribution of property in case of intestacy had I died intestate at that time the owner of the trust property, unmarried and domiciled in New Hampshire.

## ARTICLE V TRUST FOR BENEFICIARY UNDER AGE FORTY

If in accordance with the provisions of this trust instrument any trust property becomes distributable outright to a beneficiary (other than a child of mine) who is less than forty (40) years of age, equitable title to such property shall be indefeasibly vested in such beneficiary, but the Trustee is authorized, in the Trustee's discretion, to retain such property and administer it in a separate trust for the benefit of such beneficiary as follows:

A. Distribution Until Beneficiary Reaches Age Forty or Dies. Until the beneficiary reaches the age of forty (40) or sooner dies, the Trustee may distribute all or any portion of the net income and principal of the trust to the beneficiary in such amounts and at such times as the Trustee determines to be necessary for such beneficiary's support, health, maintenance, and education.

B. Distribution When Beneficiary Reaches Age Forty or Dies. When the beneficiary reaches the age of forty (40), the Trustee shall distribute the then remaining principal and undistributed income to the beneficiary. If the beneficiary dies before reaching such age, then upon the death of the beneficiary, the Trustee shall distribute the then remaining principal and undistributed income to the estate of the beneficiary.

## ARTICLE VI SPECIAL TERMINATION OF TRUSTS

Notwithstanding any directions given the Trustee as to the discretionary distribution of income and principal under the terms of this trust instrument:

A. Termination of Small Trusts. If after my death the principal and undistributed income of any trust shall be less than an amount which the Trustee deems practical for continuance of the trust, the Trustee may, in the Trustee's discretion, terminate the trust by distributing all of the then remaining principal and undistributed income to my then living descendants, per stirpes, and if none are then living, to the person or persons to whom the income payments of the trust could be made, such persons, if there be more than one who are descendants of mine, to take per stirpes.

B. Termination Within Period of Rule Against Perpetuities. Any trust under this trust instrument in which equitable title to the property is not indefeasibly vested in the beneficiary shall terminate twenty-one (21) years after the date of the death of the survivor of me and all of my descendants who are alive on the date of execution of this trust instrument. Upon such termination the Trustee shall distribute the then remaining principal and undistributed income of such trust to the person or persons to whom the income payments could be made under such trust immediately prior to its termination, such persons, if there be more than one who are descendants of mine, to take per stirpes.

**ARTICLE VII**  
**PROVISIONS RELATING TO DISCRETION OF TRUSTEE**

A. Protective Trust Provisions. No beneficiary of any trust created under this instrument shall have the power to anticipate, encumber, or transfer any interest in the trust estate in any manner. No part of any trust estate shall be liable for or charged with any debts, contracts, liabilities, or torts of a beneficiary or be subject to seizure or other process by any creditor of a beneficiary. Notwithstanding the foregoing, if any beneficiary of any trust created under this instrument shall attempt to anticipate, pledge, assign, sell, transfer, alienate or encumber his or her interest in the income or principal of such trust; or if any creditor or claimant shall attempt to subject such interest to the payment of any debt, liability or obligation of any such beneficiary; or if such beneficiary shall be subject to bankruptcy, insolvency or receivership proceedings, thereupon any absolute right of such beneficiary to income or principal from such trust shall cease. Thereafter, and until such time as the Trustee is able to distribute such property to such beneficiary, the Trustee may accumulate trust income, if any, to which such beneficiary would otherwise be entitled or the Trustee may distribute the same to the other beneficiaries, if any, of the trust entitled to receive such income and shall be held harmless in making such discretionary distributions. In no event shall the Trustee be required or compelled to pay any income or principal to or for the benefit of such beneficiary, and, upon the death of such beneficiary, any property held or accumulated in his or her trust shall be distributed in accordance with the provisions provided for principal dispositions at his or her death.

B. Limitations on Trustee in Exercising Discretion. Notwithstanding any other provision of this trust instrument, a Trustee shall not possess or participate in the exercise of any discretionary power granted to a Trustee to make distributions of net income or principal of a trust (i) to himself or herself or to any other person or institution which have the effect of discharging such Trustee's individual legal obligation or (ii) which would constitute a gift for federal gift tax purposes by such Trustee. The foregoing limitation is not intended to prohibit a Trustee who is a beneficiary of a trust from possessing or participating in the exercise of a power to distribute property to such Trustee pursuant to an ascertainable standard within the meaning of Section 2041 and Section 2514 of the Code, or which would nevertheless be includible in such Trustee's gross estate for estate tax purposes. The purpose of this provision is to prevent a Trustee who would not otherwise be taxed from being taxed because of such a power and to avoid the appointment of a special fiduciary under New Hampshire law, if possible, and it should be so construed.

C. Flexibility Provisions. I hereby grant to the Trustee the powers described in the following paragraphs, which powers may be exercised at any time (and from time to time) and may be terminated by the Trustee at any time.

1. The then acting Trustee may, from time to time, notwithstanding any other provision of this instrument, and in addition to any other powers herein provided to the Trustee, amend or restate this instrument, including its dispositive, administrative and other provisions of all kinds, as hereinafter provided in this Paragraph; provided, that this power to amend shall not apply to any Trustee who has ever made a transfer to such trust that has constituted a gift for federal gift tax purposes, or who is a beneficiary of such trust. Such amendment or restatement shall be effective with respect to such trust, as well as to all trusts that are subsequently to come

into existence under this instrument to hold part or all of the assets of such trust ("trusts that result from such trust"). The purposes for which an amendment or restatement to this instrument may be made pursuant to the preceding paragraph are to permit such Trustee:

- a. To deal more effectively with tax and/or other circumstantial changes that may affect such trust and/or its beneficiaries;
- b. To take advantage of changed trust drafting approaches to deal more effectively with potential trust problems, or otherwise to improve the clarity and administerability of the trust provisions; and/or
- c. To remove from the governing trust instrument any provisions which have become "deadwood" (i.e., no longer operative in the ongoing administration of such trust due to changed circumstances).

2. The power of amendment granted under this Paragraph may be exercised in whatever way or ways such Trustee, in the exercise of such Trustee's sole discretion, may deem appropriate and in the best interests, as interpreted by such Trustee alone, of the primary beneficiary or beneficiaries of such trust and of each such beneficiary's family as a whole. Such Trustee shall be guided by what, in the sole judgment of such Trustee alone, would apparently be my original intent hereunder in the light of the circumstances then existing. This power of amendment shall include, by way of example and not limitation, the power to:

- a. Grant, increase, reduce, or eliminate general (as defined in Code Section 2041) and special powers of appointment with respect to part or all of any trust property (such powers may be made subject to any conditions or consents and limited to such objects as may be described in the grant or reduction of each power);
- b. Add mandatory distribution or set aside provisions for one or more beneficiaries or permissible distributees;
- c. Divide a trust at any time (before or after it is funded with assets) into two or more separate trusts (representing fractional shares of any property being divided as provided in this trust agreement) or merge separate trusts together;
- d. Restrict in any way, revocably or irrevocably, the future exercise of any power held by any beneficiary or beneficiaries and/or Trustee or Trustees hereunder; and
- e. Provide for the creation of one or more separate subtrusts or subaccounts (equivalent to a separate trust) in any trust hereunder with respect to which subtrust or subaccount more restrictive or other administrative or dispositive provisions are made applicable in order to permit some or all of the properties or interests that may at any time be held in or allocable to that trust to be segregated and transferred to that subtrust or subaccount to achieve some tax or other benefit that would otherwise not be available to such property or interest or to the primary beneficiary or one or more of the other current beneficiaries of that trust – such as, by way of example and not limitation, to permit:

(i) Such property, interest, or beneficiary to qualify for any governmental or tax benefit, generation-skipping transfer tax exemption or Code Section 2032A election;

(ii) A disclaimer to be made;

(iii) Shares of S corporation stock to be held in a subaccount that satisfies the statutory requirements of a qualifying stockholder; or

(iv) Certain property or assets of the trust to be disposed of in a more tax efficient manner or to be segregated from the other assets and property of the trust for liability protection, investment or other purposes.

3. Notwithstanding the foregoing, however, under no circumstances shall any such amendment, with respect only to any trust already in existence hereunder (i.e., to which property has already been transferred) at the time of such amendment:

a. Diminish or eliminate in any way (that is not controlled by the beneficiary) any enforceable right any beneficiary may already have (under the then terms of this instrument) to receive the income or principal of any trust, currently or at any time in the future; however, to the extent that an amendment benefits or grants a power to any beneficiary of a trust, it may diminish or eliminate the rights of one or more beneficiaries to receive in the future the income or principal of that trust or of any trusts that result from that trust;

b. Reduce in any way the restrictions or limitations on:

(i) Fiduciary actions as set forth in this agreement;

(ii) The Trustee's limited power of amendment under this Paragraph; or

(iii) Who (or what institutions) can qualify to fill any office of trustee hereunder,

unless as a result of some change in the federal tax laws, regulations, or rulings on which taxpayers may rely, such reduction of restrictions and/or limitations will no longer have any adverse wealth transfer tax effect on such trust, any person who directly or indirectly has transferred assets to it, or any of its beneficiaries [all of which provisions, referred to in (1), (2) and (3) above, may, however, be amended, irrevocably and binding on successors, to increase such restrictions and limitations in any way such Trustee may deem appropriate];

c. Give anyone acting in a nonfiduciary capacity any powers granted herein to fiduciaries, unless, as a result of a change in law (as described in subparagraph b. above), such amendment will no longer have any adverse wealth transfer tax effect on such trust, any person who has transferred property to it by gift, or any of its beneficiaries;

d. Result in any direct or indirect financial benefit (or grant any power of appointment) to any individual who is not at the time of such amendment both:

(i) A member of my family (meaning any of my lineal descendants or spouse of any of my lineal descendants); and

(ii) Already a present or potential future beneficiary of such trust (other than merely through the exercise of a power of appointment), unless the amendment is to provide for afterborn or after-adopted children of any such beneficiary;

e. Discriminate in any significant financial way in favor of one or more siblings to the detriment of any other sibling(s) where such siblings are, under the terms of this instrument, to be treated in substantially equal fashion (for this purpose treating each sibling, his or her spouse and descendants and their spouses as one unit); or

f. Make any change that would have the effect of disqualifying any such trust insofar as such trust, prior to such amendment, otherwise qualified for and was in fact already taking advantage of, while such advantage otherwise will continue:

(i) Any exemption from a surviving spouse's elective right or from any creditor's right to levy on any beneficiary's interest in any such trust; or

(ii) Any substantial deduction, credit, exclusion, or other tax benefit (such as any marital or charitable deduction, any annual gift tax exclusion, a Code Section 2032A election, a Code Section 2057 election, a generation-skipping tax exemption, the opportunity to be a stockholder in an S corporation, a significant grandfathered status under some changed law, and so on). However, this subparagraph b shall not preclude any amendment that would change any provisions of this agreement that result (or might result) in the trust involved giving rise to any adverse income or estate tax purposes for either me or my spouse or for any beneficiary hereunder, even if the effect of such change might (i) be to subject the trust or its beneficiaries (rather than any donor) to any type of income, estate, or other tax on that trust's receipts and/or assets, or (ii) result in the loss of any tax benefit otherwise available to that trust or its beneficiaries, as long as the Trustees making such amendment reasonably believe that, under all of the circumstances, (a) such change is necessary to properly reflect the original intent of each person who has made any gift to the trust as to the effect of the pre-change trust provisions on the taxability of the trust and its beneficiaries, including the consequential effect of credits, deductions, cost basis stepups, etc., or (b) in the case of an adverse income tax effect only, such change would be in the general long term best interests of the trust involved and its beneficiaries.

4. Any such amendment shall be by written instrument, executed by such amending Trustee with all the formalities of a deed, setting forth the trust or trusts hereunder to which the amendment applies and the effective date of such amendment.

5. No Trustee shall be liable for any exercise of or failure to exercise this limited power of amendment (or for a release of this power) if such Trustee acted in good faith in taking or failing to take any such action (whether or not requested to do so by any beneficiary or any beneficiary's representative). In addition, the Trustee shall be authorized, in its discretion, to

advise and consult with legal counsel, and to obtain a legal opinion therefrom, regarding any potential exercise or non-exercise of such power of amendment and shall not be liable for or chargeable with any action taken or not taken in reliance on such consultation or opinion. The cost of such consultation and/or opinion shall be paid from the assets of the trust.

6. Further, in addition to the powers granted hereinabove to the Trustee, in the case of each separate trust at any time in existence hereunder, such trust's then acting Trustee, other than any Trustee (1) who has ever made a transfer to such trust that constituted a gift for federal income tax purposes or (2) who is a beneficiary of such trust, shall have the power to distribute all of the income and principal of such trust created herein to any other trust for the primary benefit of the beneficiary or beneficiaries of such trust created herein, whether or not then living (even one created by anyone including the Trustee), whether now existing or hereafter created [except (A) any trust which is hereafter created by a grantor of such trust created herein and (B) any trust as to which a grantor has a beneficial interest or any power which could affect beneficial enjoyment], provided that (i) any such newly created trust does not allow any person who is not a beneficiary or potential future beneficiary of such trust created herein (other than merely through the exercise of a power of appointment) to receive the income or principal of the property thus distributed to such new trust and (ii) during a grantor's lifetime, any such trust is governed by an irrevocable trust instrument executed prior to or concurrently with this trust instrument.

## **ARTICLE VIII ADMINISTRATIVE POWERS OF TRUSTEE**

In the management, care and distribution of each trust created hereunder, I confer upon the Trustee of such trust, and any successor Trustee, all of the powers set forth in New Hampshire Uniform Trust Code. These powers are granted to the Trustee shall be in addition to, and not in limitation of, the provisions of New Hampshire General Statutes Chapter 564-B:8-816. In addition to the powers incorporated by reference above or conferred elsewhere in this trust instrument, I grant to the Trustee the discretionary powers set forth below to be exercised without court order for any purpose that the Trustee may deem advisable:

A. Investments. The power to acquire and retain for any period of time as investments, without diversification as to kind or amount, any real or personal property or interest in such property (including an undivided, temporary or remainder interest), whether or not originally received by the trust or subsequently acquired, income or non-income producing, or located within or outside the United States, and including, but not limited to, notes, bonds, debentures, mortgages and other obligations, secured or unsecured, common and preferred stocks, mutual funds, common trust funds, general and limited partnership interests, limited liability company membership interests and leases;

B. Sale or Other Disposition of Property. The power to sell, exchange, convert, partition or abandon or otherwise dispose of, or grant options with respect to, any real or personal property at public or private sale or otherwise, 'upon' any terms and conditions, including credit, with or without security;



C. Management of Property. The power to take possession, custody and control and otherwise manage any real or personal property, including, but not limited to, the power (i) to protect, develop, subdivide and consolidate such property, (ii) to lease such property upon any terms and conditions, including options to renew or purchase, and for any period or periods of time although such period or periods may extend beyond the duration of the trust, and to modify, renew or extend any existing leases, (iii) to erect, repair, or make improvements to any building or other property and to remove existing structures, (iv) to establish and maintain reserves for the maintenance, protection and improvement of such property and for other purposes, (v) to initiate or continue farming, mining or timber operations on such property, (vi) to purchase and carry casualty and liability insurance, (vii) to grant or release easements with, respect to such property, (viii) to dedicate or withdraw from dedication such property from public use, and (ix) to join with co-owners in exercising any such powers;

D. Business Interests. The power to continue to own, or to form initially, and operate any business interest, whether in the form of a proprietorship, corporation, general or limited partnership, limited liability company, joint venture or other organization, including, but not limited to, the power (i) to effect incorporation, dissolution or other change in the form of the organization of such business interest, (ii) to dispose of any part of such business interest or to acquire the interest of others, (iii) to continue, enter into, modify or terminate any agreements relating to any such business interest, (iv) to invest capital or additional capital in or lend money to such business interest, and (v) to exercise powers concerning such business interest notwithstanding the fact that a conflict of interest as a fiduciary and as an individual may exist;

E. Borrowing Money. Subject to Paragraph M, the power (i) to borrow money for the benefit of the trust from the Trustee individually or from others, upon any terms and conditions, (ii) to secure the payment of any amount so borrowed by mortgaging, pledging or otherwise encumbering any real or personal property, and (iii) to modify, renew or extend the time for payment of any obligation, secured or unsecured, payable by the trust, for any period or periods of time and upon any terms and conditions;

F. Lending Money. Subject to Paragraph M, the power (i) to lend money to any person upon any terms and conditions, (ii) to modify, renew or extend the time for payment of any obligation, secured or unsecured, payable to the trust for any period or periods of time and upon any terms and conditions, (iii) to foreclose as an incident to the collection of any obligation, any deed of trust or other lien securing such obligation, (iv) to bid on the property at such foreclosure sale or otherwise acquire the property without foreclosure and to retain the property so obtained;

G. Holding Property in Nominee Form. The power to register and hold any securities or other property in the name of a nominee or in any other form without disclosure of the fiduciary relationship, or to hold the same unregistered in such form that they will pass by delivery, but no such registration or holding shall relieve the Trustee from responsibility for the acts of the nominee;

H. Exercise of Security Rights. With regard to securities, including stocks, bonds and any evidence of indebtedness, the power (i) to vote any such securities in person or by special, limited or general proxy at any shareholders' meeting, with or without the power of

substitution, (ii) to consent to or participate in any contract, lease, mortgage, foreclosure, voting trust, purchase, sale or other action by any corporation, company or association, (iii) to consent to, participate in, facilitate or implement any plan of incorporation, reincorporation, reorganization, consolidation, merger, liquidation, readjustment or other similar plan with respect to any such corporation, company or association, and (iv) to exercise all options, rights and privileges, including the exercise or sale of conversion, subscription or other rights of whatever nature pertaining to any such securities and to subscribe for additional securities or other property;

I. Banking Transactions. The power (i) to open, deposit cash or other assets to the credit of and maintain one or more checking, savings, cash, margin or other account in any banking, trust, brokerage or investment institution, including any corporate Trustee, (ii) to exercise any right, option, or privilege pertaining to any such account, and (iii) to lease one or more safe deposit boxes for safekeeping of trust assets;

J. Collection of Death Benefits. The power (i) to collect the proceeds of any life insurance policy or other contract providing for death benefits, including individual retirement accounts and qualified plans, and (ii) to elect any mode of payment available under any such policy or contract;

K. Action on Claims. The power to compromise, settle, adjust or arbitrate, sue on, recover damages for, defend, abandon or otherwise deal with any claim or demand in favor of or against the trust upon any terms and conditions;

L. Employment of Advisors. The power to employ persons, firms and corporations to advise or assist in the proper administration of the trust or otherwise, including, but not limited to, agents, accountants, auditors, brokers, attorneys-at-law, attorneys-in-fact, custodians, investment counsel, rental agents, realtors, appraisers and tax specialists, and to charge the expense of such employment to the trust;

M. Dealing With Estates and Trusts. The power to sell any property to, or to purchase any property from, any other trust created hereunder or created by me during life, or my estate or the estate of any descendant of mine, or any trust created by any descendant of mine by will or during life, at the fair market value thereof, or to lend money to any such estate or trust at an adequate rate of interest and with adequate security, as determined by the Trustee, even though the same person or corporation may be acting as Trustee of any of such other trusts or as an Executor of any such estates and as Trustee hereunder;

N. Division or Distribution of Assets. Whenever authorized or directed to divide or distribute trust property, the power to make such division or distribution (including the satisfaction of any pecuniary sum) in cash or in specific property, real or personal, or an undivided interest in such property, or partly in cash and partly in specific property, without obligation to make pro rata distributions of specific assets and without liability for, or obligation to make compensating adjustments by reason of, disproportionate distributions of unrealized gain for income tax purposes, except that any assets so distributed in kind shall be valued at their date or dates of distribution values;

O. Credits or Charges to Income and Principal. Subject to the provisions of paragraph P of this Article, the power to determine whether items should be charged or credited to income or principal, or be apportioned between income and principal, including without limitation the power to amortize or not to amortize any part or all of any premium or discount, to treat any part or all of any profit resulting from the sale or other disposition of any property, whether purchased at a premium or at a discount, as income or principal or apportion the same between income and principal, to apportion the sales price of any property between income and principal, including the proceeds of the sale of timber, minerals and other natural resources, to treat any dividend or other distribution on any investment as income or principal or apportion the same between income or principal, to charge any expense against income or principal or apportion the same and to provide or not to provide a reasonable reserve against depreciation, depletion or obsolescence on any property subject to depreciation, depletion or obsolescence. The Trustee shall exercise the Trustee's discretion in such manner as the Trustee may reasonably deem equitable and just under all the circumstances and regardless of whether such items are charged or credited to or apportioned between income and principal as provided in the New Hampshire Uniform Trust Code; provided, however, the Trustee shall credit the receipt of all proceeds from borrowings to principal and shall not credit any such receipts to income;

P. Accumulation of Income. To the extent that the Trustee is not required to make distributions of the net income of a trust, the Trustee shall accumulate such income in a separate account, accounting for such undistributed income separately from the principal of the trust and in no event shall the Trustee add such accumulated income to the principal of the trust;

Q. Distributions to or for the Benefit of Beneficiaries. Whenever authorized or directed to distribute property to a beneficiary, whether or not under a legal disability, the power to distribute such property, unless otherwise directed, (i) directly to such beneficiary, including the transfer of property into such beneficiary's name as by depositing cash or registering securities in his or her name, (ii) to the custodian of such beneficiary under a uniform gifts or transfers to minors act, (iii) to the legal or natural guardian of the person or property of such beneficiary, or (iv) to any other person, firm or institution for the benefit of such beneficiary, and the receipt of any of the foregoing shall constitute a full acquittance of the Trustee to the extent of the distribution so made;

R. Holding Assets of Separate Trusts Undivided. The power to acquire, receive, hold and administer property of two or more separate shares or trusts undivided so long as separate accounts are maintained at all times for each of the separate shares or trusts;

S. Consolidation of Similar Trusts. The power to add the assets of any trust established under this trust instrument (except a trust which is eligible to qualify for the marital deduction in the federal estate tax proceeding relating to my estate) to the assets of any other trust established under this trust instrument or any trust established outside of this instrument and administer them as one trust when such trusts have substantially similar terms and identical beneficiaries and Trustees provided such consolidation does not (i) defeat or impair any beneficial interest or (ii) cause the inclusion ratio of either trust for federal generation-skipping transfer tax purposes to change from zero to a number greater than zero;

T. Creation of Subtrusts and Subaccounts. The power to create one or more separate subtrusts or subaccounts (equivalent to a separate trust, including trusts with their own separate tax identity) in any trust hereunder, revocable or irrevocable, in order to permit some or all of the properties or interests that may at any time be held in or allocable to that trust to be segregated and transferred to that subtrust or subaccount to achieve some tax, investment or other benefit that would otherwise not be available to such property or interest or to the primary beneficiary or one or more of the other current beneficiaries of that trust;

U. Separation of Trust Property for Generation-Skipping Transfer Tax "GST" Purposes. The power (i) to separate trust property into separate shares or trusts either before or after an allocation of GST exemption to a separate share or trust so that the separate share or trust will be created having property equal in value to the amount of the exemption as of the valuation date for such allocation in order that such separate share or trust will have an inclusion ratio of zero, (ii) to hold as a separate trust property to be added to another trust which is subject to different treatment for GST purposes than the property which is to be added to it and to administer such trust, as well as the trust to which the property would have been added, in accordance with the provisions that would have governed the combined trusts, and (iii) to divide any trust into separate fractional shares and hold such shares in separate trusts with identical terms whenever the division may facilitate avoiding or delaying GST, including the division of a trust with an inclusion ratio of more than zero into two separate trusts, one with an inclusion ratio of one and the other with an inclusion ratio of zero;

V. Execution and Delivery of Documents. The power to execute and deliver, modify, or rescind any and all instruments, under seal or otherwise, including, but not limited to, contracts, deeds, leases and notes, to carry out the administration of the trust;

W. Tax Elections. The power to make any election permitted by any tax law, including the authority to elect or maintain S corporation status for federal tax purposes for any corporation in which the trust may own an interest, if the Trustee determines such election is for the combined best interest of the trust and the beneficiaries thereof, and shall be authorized to make, or not to make, such adjustments among the interested parties or shares as such Trustee may reasonably deem equitable and just under all the circumstances. The Trustee shall also be authorized, but not required, for tax, administrative or investment purposes to divide any trust established hereunder at any time, based upon the fair market values of the trust property at the time of such division, into two or more separate trusts, the dispositive provisions of which shall be identical to those applicable to the trust prior to any such division, and to consolidate any trust established hereunder with any other trust having substantially identical provisions for the same beneficiary or beneficiaries if such consolidation does not (i) defeat or impair any beneficial interest or (ii) cause the inclusion ratio of either trust for federal generation-skipping transfer tax purposes to change from zero to a number greater than zero. Without limiting the generality of the foregoing, the Trustee may divide any trust to be established hereunder into separate trusts consisting of portions that would, and would not, respectively, be included in the gross estate of any beneficiary hereunder for federal estate tax purposes if such beneficiary died immediately prior to the division or portions each of which for federal generation-skipping transfer tax purposes has an inclusion ratio of either zero or one or portions which for federal generation-skipping transfer tax purposes have different transferors; and

X. Indemnification. The Trustee (and every present or former officer, employee and affiliate of the Trustee) shall not be liable for and shall be indemnified out of the principal and income of the trust against the consequences (including legal and other expenses) of any act or omission of itself or any agent, delegate or adviser, whether affiliated or unaffiliated, or any answer to any inquiries or generally any breach of any duty or trust unless it shall constitute fraud on the part of the Trustee, or shall prove to have been made, given, or omitted in bad faith or with a sufficient absence of care to constitute reckless indifference on the part of the Trustee itself or its officers or employees of the duties and obligations imposed by this Agreement.

## ARTICLE IX SPECIAL PROVISIONS RELATING TO LIFE INSURANCE

The following provisions relate to life insurance policies owned by the trust:

A. Acquisition and Maintenance of Life Insurance Policies. The Trustee is authorized to apply for and maintain one or more insurance policies as an investment and to hold them in accordance with the provisions of this Trust. I also explicitly acknowledge and authorize the Trustee and its affiliates, related entities, and officers to act as agent for the acquisition of life policies for this trust, to be paid commissions for doing so, and waive any conflict-of-interest this may create.

1. As to each insurance policy owned by the Trustee, whether purchased by the Trustee or transferred to the Trustee:

a. The Trustee shall have all the rights of an absolute owner, including the right to borrow money upon the insurance policy, to enter into any "split-dollar" arrangement with respect to the insurance policy, to collaterally assign any insurance policy benefits pursuant thereto and to terminate any such arrangement by "roll-out" or otherwise, to effect a change of beneficiary, to exercise all conversion rights, to hypothecate the same to secure any loans, to receive all dividends, refunds, disability payments, cash surrender values or other payments which may accrue or be made during my life, to receive and exercise all benefits and privileges with respect thereto, and generally to exercise all rights of an owner of the insurance policy. The Trustee is authorized to execute all necessary documents with respect to the insurance policy, including receipts and releases to the insurer.

b. The Trustee is authorized, but is under no obligation, to pay the premiums, dues, assessments or other charges which become due and payable with respect to the insurance policy. The Trustee shall not be obligated to see that such payments are made by any person, or to notify me or any other person that such payments are or will become due, and the Trustee shall be under no liability to anyone in case such premiums, dues, assessments or other charges are not paid, or for any result of the failure to make such payments.

c. The Trustee shall have no duty (i) to monitor the financial stability of any insurance company that has issued the insurance policy, and the Trustee shall not be liable to any person by reason of the insolvency of any issuer of the insurance policy except to the extent that applicable law imposes such obligations or liabilities; (ii) to monitor the investment performance or other features of a insurance policy or to compare such performance or features

to that of other available insurance policy; or (iii) to diversify a trust's holdings that consist of a insurance policy or insurance policies (or any interest received in exchange for an assignment of an interest in a insurance policy), either by acquiring additional insurance policy or by acquiring other types of assets, and the Trustee is authorized to hold the entire trust in a single insurance policy issued by one carrier.

d. Notwithstanding anything contained herein to the contrary, I specifically prohibit the Trustee from using the income or accumulated income of the trust (including capital gain) for the payment of premiums on policies of insurance on my life or the life of my husband.

2. Without limitation on the generality of the foregoing, the Trustee is expressly authorized (but is under no obligation) to enter into a premium finance transaction involving the acquisition of an insurance policy.

B. Restrictions Concerning Life Insurance Policies. Notwithstanding the foregoing,

1. If an income beneficiary has a power to appoint trust property, such power shall not be applicable to any policy on such beneficiary's life, and such policy and its proceeds shall be disposed of as if the power had not been exercised with respect to such policy or its proceeds;

2. An individual Trustee whose life is insured shall have no right, but the other Trustee or Trustees, if any, shall have the sole right to exercise the powers of a Trustee concerning any such policy, including the exercise of any incidents of ownership with respect to such policy.

C. Collection of Death Benefits. Following my death, the Trustee shall collect any and all death benefits and other property to be distributed to the Trustee by reason of such death; provided the Trustee shall not be required to institute proceedings to collect such benefits without indemnification satisfactory to the Trustee for any resulting expense, including, without limitation, counsel fees. In the collection of the proceeds payable under any life insurance policies, payment to and receipt by the Trustee shall be a full discharge of the liability of any insurance company, and any such company need not take notice of this instrument or see to the application of any such payment by the Trustee.

## ARTICLE X SPECIAL PROVISIONS TO DELAY DISTRIBUTION

It is my intent that after my death, the trust property be available to lend money to my estate and to purchase real or personal property from my estate. Therefore, notwithstanding any other provision of this trust instrument, the Trustee may, in the Trustee's discretion, delay distributing trust assets after my death until the administration of my estate is completed.

**ARTICLE XI**  
**SUCCESSOR TRUSTEE AND OTHER ADMINISTRATIVE**  
**PROVISIONS**

The procedure for resignation of the then acting Trustee of any separate trust without court order and for the appointment of a successor Trustee without court order, as well as other administrative provisions relating to the Trustee, shall be as follows:

A. Resignation of Trustee. A Trustee shall have the right to resign at any time by giving written notice to his or her co-Trustee or the successor Trustee designated below or, if none, to the person or persons designated below who are authorized to appoint a successor Trustee. Such resignation shall become effective upon delivery of the resignation to the other then acting Trustee or Trustees, if any, and; if none, acceptance of the trusteeship by a successor Trustee.

B. Appointment of Successor Trustee. If the last then acting Trustee. (or any successor thereto appointed as provided herein) fails or ceases to act as Trustee (the "retiring Trustee"), a successor Trustee may be appointed as follows:

1. A majority of the beneficiaries to whom the income of the trust could then be paid (other than my husband or me) shall have the right to appoint a successor Trustee. If a beneficiary is a minor or not competent, the appointment on his or her behalf may be made by a person (other than me or my husband) who is (i) the guardian of the beneficiary's estate or, if none, (ii) a parent of the beneficiary or, if no such parent is living and competent, (iii) the guardian of the person of the beneficiary.

2. Any successor Trustee appointed pursuant to this Article must be (i) an association, a corporation or a company qualified to exercise trust powers or (ii) an individual (other than me or my spouse), and under no circumstances shall I or my spouse have the power to appoint a successor Trustee.

3. The appointment of any successor Trustee shall be effected by an instrument which has been signed by the person or persons having the right of such appointment and which has been delivered to such successor Trustee and to the then acting Trustee, if any. A retiring Trustee shall have the right to make such appointment by last will or codicil thereto, making reference to the power to appoint a Trustee, if the vacancy occurs as a result of the death of such retiring Trustee,

C. Appointment of Co-Trustee. Notwithstanding any other provision in this Article to the contrary, any then acting Trustee shall have the right to appoint a co-Trustee. The appointing Trustee shall have the right to remove such appointed co-Trustee at any time by giving written notice of such removal to the co-Trustee.

D. No Requirement of Successor Trustee to Audit. No successor Trustee shall be required to review or audit the accounts and transactions or otherwise to inquire into any act or omission of any predecessor Trustee or to assert any claim against such predecessor or his or her estate and shall not be liable for any acts or omissions of any predecessor Trustee.

E. Powers of Successor Trustee. Any successor Trustee may exercise all the powers and authority conferred upon the original Trustee, including the right to resign.

F. Exercise of Powers by Co-Trustees. Whenever two or more Trustees are acting under this trust instrument, any individual Trustee shall have the power without court order at any time and from time to time to delegate to the other Trustee or Trustees any or all of the Trustee's powers as co-Trustee. The power of delegation shall be exercised by the Trustee by delivery to the other Trustee or Trustees of written notice specifying the powers delegated. Such delegation shall remain effective for the time specified in the notice or until earlier termination by the delegating Trustee by delivery to the other Trustee or Trustees of written notice of termination. The delegating Trustee shall not be liable with respect to the exercise or nonexercise of powers delegated during the period of delegation.

G. Other Provisions Regarding Trustee.

1. No Trustee acting hereunder who is a natural person shall be entitled to receive compensation for his or her services as Trustee hereunder, but shall be entitled to reimbursement for any out-of-pocket expenses reasonably incurred in the administration of the trust. A corporate Trustee may receive compensation for its services in accordance with its published schedule of fees in effect at the time the services under this trust instrument are rendered or as provided in a separate fee agreement. Until my death, Noble Trust Company shall receive an annual fee of \$1,500 to administer the trust so long as it is Trustee, such fee to be collected solely from the assets of the trust.

2. No bond or other security shall be required from any Trustee. Any Trustee may act without qualifying before any court or filing with any court any inventory, accounting or other report relating to the administration of the trust unless otherwise required by law to do so.

3. No person or institution dealing with the Trustee shall be required to see to the application of any money or other property delivered to the Trustee or to inquire into the necessity or propriety of any action taken or not taken by the Trustee.

4. The Trustee shall furnish upon request, at least annually, accounts of receipts and disbursements of trust property to each beneficiary to whom income of the trust could then be paid who is not under any legal disability and to each person (other than a governmental authority) having custody of any such beneficiary who is under a legal disability.

H. Payment of Death Taxes. Notwithstanding the foregoing provisions of this trust instrument, if any property in the trust is includible in my gross estate for federal estate tax purposes, the Trustee shall pay to my estate or to the appropriate taxing authorities out of such trust property an amount equal to the excess of (i) the total death taxes payable by reason of my death over (ii) the total death taxes that would have been payable by reason of my death if none of such trust property had been includible in my estate for the purpose of such taxes. The term "death taxes" includes inheritance, estate, transfer or succession taxes and any interest and penalties payable in connection with such taxes.



## ARTICLE XII PRESUMPTION OF SURVIVORSHIP

If any beneficiary under this trust instrument and I should die under such circumstances that there is uncertainty as to which person predeceased the other, it shall be conclusively presumed for the purposes of this trust instrument that such beneficiary predeceased me.

## ARTICLE XIII DEFINITIONS

For purposes of this trust instrument,

A. “Child,” “Children” and “Descendants”. The terms “child” and “children” mean lawful lineal blood descendants in the first degree of the parent designated, and the term “descendants” means lawful lineal blood descendants in any degree of the ancestor designated, but such terms shall include any person legally adopted prior to the time that person reaches the age of eighteen (18) and the lawful lineal descendants of any such person, whether of the blood or by adoption prior to such age.

B. “Incapacitated” or “Not Competent”. An individual shall be deemed “incapacitated” or “not competent” under any one or more of the following circumstances: (i) during any period that the individual is legally incompetent as determined by a court of competent jurisdiction; (ii) during any period beginning when two physicians licensed to practice medicine certify in writing that, in their opinion, the individual, as a result of illness, age or other cause, no longer has the capacity to act prudently or effectively in financial affairs and continuing until two such physicians (whether or not those making the initial determination) certify in writing that, in their opinion, the individual’s capacity is restored; or (iii) during any period that a person (other than such individual) or an institution who is a Trustee, or, if none, who is designated as a successor Trustee, or, if none, who can appoint a successor Trustee, has evidence that the individual is absent without explanation or is being detained against his or her will under circumstances in which he or she does not have the capacity to act prudently or effectively in financial affairs.

C. “Per stirpes”. Whenever property is to be divided among an individual’s then living descendants, “per stirpes,” the property shall be divided into as many equal shares as there are children of the individual who are then living or who have died leaving issue then living. A share allocated to a deceased child of the individual shall be divided further among such deceased child’s then living descendants in the same manner.

## ARTICLE XIV APPLICABLE LAW

Subject to Paragraph E of the Article entitled “Successor Trustee and Other Administrative Provisions,” the situs of this trust shall be the State of New Hampshire, and the validity and construction of the trust, and the rights of the beneficiaries hereof, shall be governed by the laws of the State of New Hampshire. The Trustee may at any time change the situs of this Trust, or any sub trust (and to the extent necessary or appropriate, the Trust assets) to a state or country other than the one in which the trust is established or then administered. The Trustee

may elect that the law of such other jurisdiction shall govern the Trust to the extent necessary or appropriate under the circumstances.

#### **ARTICLE XV IRREVOCABILITY**

The trust shall be irrevocable, and I hereby acknowledge that I shall have no right or power, whether alone or in conjunction with others, in whatever capacity, (i) to amend or revoke the trust or any of the terms of this instrument, in whole or in part, or (ii) to designate the persons who shall possess or enjoy the trust property or the income from it.

#### **ARTICLE XVI DISCLAIMERS**

Any beneficiary or the legal representative of any deceased beneficiary shall have the right, within the time prescribed by law, to disclaim any benefit or power granted hereunder. Any transfer taxes incurred at my death and attributable to a qualified disclaimer of property included in my gross estate shall be paid from the disclaimed property. The transfer taxes attributable to a qualified disclaimer shall be the difference between (1) the actual taxes payable at my death and (2) the taxes that would be payable if the disclaimer were not made.

#### **ARTICLE XVII IN TERROREM CLAUSE**

If any person for any reason or in any manner whatever, directly or indirectly, contests the provisions of this trust in whole or in part, on any ground whatever, or opposes or objects to any of the provisions hereof or seeks to invalidate any such provisions, then such person shall neither take nor receive anything from this trust, and any gift or other interest in this trust to which such person would otherwise be entitled by virtue of the provisions hereof shall be revoked and be canceled and rendered void and of no effect whatever, and the Trustee shall give the same to those persons who would be entitled thereto under the provisions of this trust had such person predeceased the Grantor without issue.

The Trustee and I have signed and sealed this instrument on the 24 day of Sept. 2007.

GRANTOR:

Florence B. Winston (SEAL)  
Florence B. Winston

TRUSTEE:

NOBLE TRUST COMPANY

Eve Lindsey  
By: EVE LINDSEY  
Its: VP Insurance Operations

[Corporate Seal]

STATE OF North Carolina  
COUNTY OF Wake

I, Deborah L. Rios, a Notary Public for said County and State, do hereby certify that FLORENCE B. WINSTON personally appeared before me this day and acknowledged to me the voluntary execution of the foregoing instrument for the purposes stated therein and in the capacity indicated.

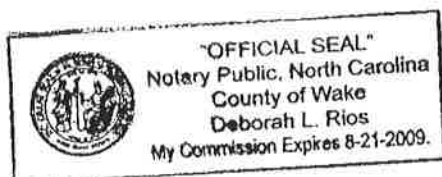
WITNESS my hand and notarial seal, this the 24<sup>th</sup> day of September, 2007.

(SEAL)

SIGNED: Deborah L. Rios  
Notary Public  
Deborah L. Rios

My Commission Expires:

8-21-2009



STATE OF NH

COUNTY OF Hillsborough

I, Amanda Dresser, a Notary Public of the said County and State,  
do hereby certify that EW Lindsey officer of NOBLE TRUST COMPANY, a  
New Hampshire corporation, personally appeared before me this day and acknowledged the due  
execution of the foregoing instrument on behalf of said corporation.

WITNESS my hand and notarial seal, this the 25 day of September, 2007.

(SEAL)

SIGNED: Amanda Dresser  
Notary Public

My Commission Expires:

**AMANDA DRESSER, Notary Public**  
**My Commission Expires June 13, 2012**

## **EXHIBIT A**

### **SURVIVOR'S TRUST**

#### **DISTRIBUTION OF TRUST AFTER DEATH OF GRANTOR**

Upon my death, the Trustee shall divide and allocate the trust principal, including any accumulated and undistributed income, into as many equal separate trusts as there are children of mine then living and deceased children of mine with descendants then living. The Trustee shall hold the trust share of any living child of mine for the benefit of said living child and, during the life of such child shall distribute the net income from said trust to said child, not less frequently than annually. Upon the death of a child their trust share shall be divided into as many equal separate trust shares as they have children. The Trustee shall hold the trust share of any grandchild of mine for the benefit of said grandchild, and during the life of such grandchild the Trustee shall distribute the net income of that trust share to that grandchild not less frequently than annually. At the death of a grandchild their trust share shall be distributed outright and free of trust to the then living descendants of the grandchild, per stirpes, or if no such descendants are then living to my descendants then living, per stirpes, subject to the provisions of Article V. In addition, if any share is distributable to a descendant of mine more remote than a child or grandchild of mine such share shall be distributable to such descendant outright and free of trust, subject to the provisions of Article V. The Trustee shall distribute trust property to any child or grandchild of mine if needed for health and support as reasonably determined by the Trustee. During her lifetime, MARION WINSTON shall have the right to withdraw the trust property of her trust upon written directions to the Trustee. Her power is not subject to change by the Trustee notwithstanding other Trustee powers in this trust instrument.



## THE LAWRENCE P. O'REILLY IRREVOCABLE TRUST #2

Ryan K. Crayne hereby declares that any and all property, real or personal, that may be transferred to him as Trustee hereunder, and all investments and reinvestments thereof, all additions thereof and all substitutions therefor (referred to herein as the "trust property") shall be held, IRREVOCABLY IN TRUST, as follows:

FIRST: This trust shall be known as "The Lawrence P. O'Reilly Irrevocable Trust #2."

SECOND: Any person may make additions to the principal of any trust under this trust instrument by lifetime gift, will, designation of the Trustee as beneficiary or otherwise.

THIRD: At any time within one hundred eighty days after this trust instrument is executed, the majority in number of Lawrence P. O'Reilly's descendants who are living and competent may remove Ryan K. Crayne as the Trustee by a written notice delivered to Ryan K. Crayne; provided, however, that no such removal shall become effective until a successor Trustee has accepted such office.

FOURTH: The following provisions apply to the Trustee:

- (a) Each Trustee serving hereunder shall be entitled to receive reasonable compensation for services performed.
- (b) No bond or other security shall be required from any Trustee. Any Trustee may act without qualifying before any court or filing with any court any inventory, accounting or other report relating to the administration of the trust unless otherwise required by law to do so.
- (c) No person or institution dealing with the Trustee shall be required to see to the application of any money or other property delivered to the Trustee or to inquire into the necessity or propriety of any action taken or not taken by the Trustee.
- (d) The Trustee shall furnish upon request, at least annually, accounts of receipts and disbursements of trust property to each beneficiary to whom income of the trust could then be paid who is not under any legal disability and to each person (other than a governmental authority) having custody of any such beneficiary who is under a legal disability.

FIFTH: Except as otherwise provided above, the trust property shall be held, administered and disposed of as provided in Articles II through X, Paragraphs A through F of Article XI, Articles XII through XVII and Exhibit A of The Lawrence P. O'Reilly Irrevocable Trust dated October 8, 2007 (the "2007 Trust"). A copy of the 2007 Trust is attached hereto, and Articles II through X, Paragraphs A through F of Article XI, Articles XII through XVII and Exhibit A of the 2007 Trust are incorporated herein by reference in their entirety. In said incorporated provisions,

all first-person pronouns and the word "Grantor" shall refer to Lawrence P. O'Reilly, the Grantor of the 2007 Trust, and in Paragraph B of Article VI, the reference to "the date of execution of this trust instrument" shall mean October 8, 2007.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Ryan K. Crayne, Trustee

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Ryan K. Crayne.

\_\_\_\_\_  
Notary Public  
My Commission Expires:



## CHANGE OF BENEFICIARY

TO: Wells Fargo Bank, N.A., Trustee of The Lawrence P. O'Reilly CS Trust 2 (the "Trust")

Under paragraph (c) of Article XI of the Trust, I, in my capacity as Protector of the Trust, am given the power to change the Beneficiary of the Trust. I hereby exercise such power by designating The Lawrence P. O'Reilly Irrevocable Trust #2, dated \_\_\_\_\_, 2013, as the new Beneficiary of the Trust.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Glenn A. Perlow, Bank Commissioner of the  
State of New Hampshire, as Liquidator of  
Noble Trust Company and Protector of The  
Lawrence P. O'Reilly CS Trust 2

The undersigned hereby acknowledges receipt of the foregoing Change of Beneficiary this  
\_\_\_\_\_ day of \_\_\_\_\_, 2013.

WELLS FARGO BANK, N.A., as Trustee  
of The Lawrence P. O'Reilly CS Trust 2

By: \_\_\_\_\_  
Title: \_\_\_\_\_

THE LAWRENCE P. O'REILLY CS TRUST (the "Trust")

Glenn A. Perlow, Bank Commissioner of the State of New Hampshire, as duly appointed Liquidator (the "Liquidator") of Noble Trust Company ("Noble"), acting on behalf of Noble pursuant to authority granted by the Merrimack County Superior Court by Order dated \_\_\_\_\_, 2013 entered in the civil proceeding entitled *In the Matter of the Liquidation of Noble Trust Company* (Docket No. 08-E-0053), and in accordance with the provisions of paragraph (j) of Article XI of the Trust, hereby effects the resignation of Noble as the Protector of the Trust, and appoints Ryan K. Crayne as the successor Protector of the Trust.

Dated: \_\_\_\_\_, 2013

GLENN A. PERLOW, BANK  
COMMISSIONER OF THE STATE OF  
NEW HAMPSHIRE, AS LIQUIDATOR  
OF NOBLE TRUST COMPANY

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Acceptance by Successor Protector

The undersigned hereby accepts his appointment as successor Protector of the Trust.

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Ryan K. Crayne

STATE OF NH  
COUNTY OF Hillsborough

IRREVOCABLE  
TRUST AGREEMENT

THIS IRREVOCABLE TRUST AGREEMENT is entered into this 8<sup>th</sup> day of October, 2007, by and between

Lawrence P. O'Reilly who, as Grantor, is referred to in this trust instrument in the first person; and

NOBLE TRUST COMPANY who, as Trustee, is referred to in this trust instrument as the "Trustee."

For convenience, this trust shall be known as THE LAWRENCE P. O'REILLY IRREVOCABLE TRUST dated October 8<sup>th</sup>, 2007 and it shall be sufficient that it be referred to as such in any deed, assignment, beneficiary designation, bequest, or devise.

**ARTICLE I**  
**TRUST PROPERTY**

A. Original Trust Property. I have delivered to the Trustee as the original trust property the sum of Ten Dollars (\$10.00), receipt of which the Trustee acknowledges. The Trustee agrees to hold the original trust property, any additions thereto, and any investments and reinvestments thereof, under the terms of this trust instrument. The Trustee shall not be required to invest any property contributed to the Trust, including investing such contributed property in an account or investment that produces income, and shall be authorized to hold such property in the form in which it was originally contributed.

B. Additions to Trust Property. I or any other person may make additions to the principal of any trust under this trust instrument by lifetime gift, will, designation of the Trustee as beneficiary or otherwise.

**ARTICLE II**  
**DISPOSITION OF TRUST PROPERTY**  
**DURING GRANTOR'S LIFETIME**

During my lifetime the trust property shall be disposed of as provided in this Article.

A. Demand Rights. I grant the following rights to my descendants:

1. If any transfers which are treated as gifts under the federal gift tax law are made, directly or indirectly, to this trust during the period prior to my death, each then living child of mine shall thereupon have the absolute right and power (hereinafter

referred to as the "demand right") to demand the immediate distribution from this trust of an amount, which the Trustee in its discretion may satisfy in cash or in property of equivalent current fair market value or both, equal to the greater of:

a. The amount of such transfer divided by the total number of children of mine having such demand right, provided such resulting amount does not exceed the amount specified in Section 2514(e)(1) of the Internal Revenue Code of 1986, as amended (the "Code") (currently Five Thousand Dollars (\$5,000.00), adjusted to reflect any subsequent amendments to such Code Section), and if such resulting amount does exceed the amount specified in Code Section 2514(e)(1), then the amount subject to withdrawal under this subparagraph shall be an amount equal to the amount specified in such Code Section; and

b. An amount equal the amount specified in Code Section 2514(e)(2) (currently five (5%) percent of the aggregate value of the trust principal, adjusted to reflect any subsequent amendments to such Code Section) at the time of such transfer.

2. If any transfer to this trust exceeds the demand rights available to my children with respect to such transfer, or if none of my children are then living at the time of a transfer, each then living descendant of mine (other than a child of mine) shall have a demand right equal to the greater of:

a. The amount of such transfer divided by the total number of descendants of mine (other than children of mine) having such demand right, provided such resulting amount does not exceed the amount specified in Code Section 2514(e)(1) (currently Five Thousand Dollars (\$5,000.00), adjusted to reflect any subsequent amendments to such Code Section), and if such resulting amount does exceed the amount specified in Code Section 2514(e)(1), then the amount subject to withdrawal under this subparagraph shall be an amount equal to the amount specified in such Code Section; and

b. An amount equal the amount specified in Code Section 2514(e)(2) (currently five (5%) percent of the aggregate value of the trust principal, adjusted to reflect any subsequent amendments to such Code Section) at the time of such transfer.

3. To the extent that a demand right granted under paragraph A of this Article has not been exercised in writing by a beneficiary with a demand right by the thirtieth (30th) day after the transfer to this trust giving rise to such demand right, it shall thereupon lapse, and such beneficiary having the demand right shall forever cease to have any further demand right with respect to such transfer to this trust.

4. Such demand right shall be exercisable by a beneficiary with a demand right by notification to the Trustee, provided that if any beneficiary is then under any legal disability of any kind, such demand right may be exercised by the guardian of his or her estate (other than myself), if any, and if none, such other individual who the Trustee shall deem appropriate, acting solely in the behalf of such beneficiary in making

such demand. Any such distributions shall be received by such guardian or individual solely for the benefit and use of such beneficiary.

5. Each and every time any transfer is made that would give rise to a demand right, the Trustee, upon receipt of the assets which are the subject of the transfer, or upon receipt of written notification that such transfer has been completed if such transfer has been made indirectly, shall promptly give notice of such transfer to any beneficiary with a demand right, and if any such beneficiary is then under any legal disability, the Trustee shall also give such notice to the guardian of his or her estate (other than myself), if any, and, if none, to such other individual who the Trustee shall deem appropriate. If any beneficiary with a demand right is then acting as Trustee hereunder, such beneficiary shall be deemed to have received the notice required to be given by the Trustee as of the date of such transfer.

6. Upon timely receipt by the Trustee of notice from a beneficiary that a demand right is to be exercised, such demand right shall be forthwith honored and satisfied by such Trustee as provided above, and to this end such Trustee shall, at all times while such a demand right is outstanding and exercisable, retain sufficient transferable assets in the trust, if possible, to satisfy such demand right should it be exercised. To satisfy a demand right made by a beneficiary, the Trustee shall be authorized to distribute a share of the interest in any life insurance policy held by it hereunder and shall also be authorized to borrow against the cash value of any such policy to obtain cash for such distribution.

7. Any individual making a transfer to this trust with respect to such transfer shall have the right, by a written instrument filed with the Trustee, (1) to exclude any beneficiary who would otherwise have a demand right over such addition from exercising such demand right, (2) to increase or decrease the limitation on the value of the property subject to the demand right with respect to any beneficiary, except that the amount subject to all demand rights resulting from such addition shall not exceed the amount of such addition, or (3) to change the period during which any demand right resulting from such addition may be exercised.

B. Disposition of Balance of Trust Property. The trust property other than that which is subject to withdrawal under Paragraph A of this Article shall be held in trust during my lifetime. The Trustee may, in the sole discretion of the Trustee, distribute income and principal of the trust at any time, and from time to time, to and among my descendants during my lifetime.

### **ARTICLE III DISTRIBUTION OF TRUST PROPERTY UPON GRANTOR'S DEATH**

Upon my death the Trustee shall hold the trust property (other than property that is payable to the Trustee as a result of my death and directed to be disposed of as a part of a specific trust under this trust instrument) in trust (the "Survivor's Trust") and shall

administer and distribute the funds to the beneficiaries named in accordance with Exhibit A, attached hereto and incorporated herein by reference.

#### **ARTICLE IV** **CONTINGENT BENEFICIARIES**

If none of the beneficiaries named in the Survivor's Trust survive me, the Trustee shall distribute the trust property to the person or persons who would have been entitled to receive my personal property under the laws providing for the distribution of property in case of intestacy had I died intestate at that time the owner of the trust property, unmarried and domiciled in New Hampshire.

#### **ARTICLE V** **TRUST FOR BENEFICIARY UNDER AGE THIRTY**

If in accordance with the provisions of this trust instrument any trust property becomes distributable outright to a beneficiary (other than a child of mine) who is less than thirty (30) years of age, equitable title to such property shall be indefeasibly vested in such beneficiary, but the Trustee is authorized, in the Trustee's discretion, to retain such property and administer it in a separate trust for the benefit of such beneficiary as follows:

A. Distribution Until Beneficiary Reaches Age Thirty or Dies. Until the beneficiary reaches the age of thirty (30) or sooner dies, the Trustee may distribute all or any portion of the net income and principal of the trust to the beneficiary in such amounts and at such times as the Trustee determines to be necessary for such beneficiary's support, health, maintenance, and education.

B. Distribution When Beneficiary Reaches Age Thirty or Dies. When the beneficiary reaches the age of thirty (30), the Trustee shall distribute the then remaining principal and undistributed income to the beneficiary. If the beneficiary dies before reaching such age, then upon the death of the beneficiary, the Trustee shall distribute the then remaining principal and undistributed income to the estate of the beneficiary.

#### **ARTICLE VI** **SPECIAL TERMINATION OF TRUSTS**

Notwithstanding any directions given the Trustee as to the discretionary distribution of income and principal under the terms of this trust instrument:

A. Termination of Small Trusts. If after my death the principal and undistributed income of any trust shall be less than an amount which the Trustee deems practical for continuance of the trust, the Trustee may, in the Trustee's discretion, terminate the trust by distributing all of the then remaining principal and undistributed income to my then living descendants, per stirpes, and if none are then living, to the

person or persons to whom the income payments of the trust could be made, such persons, if there be more than one who are descendants of mine, to take per stirpes.

B. Termination Within Period of Rule Against Perpetuities. Any trust under this trust instrument in which equitable title to the property is not indefeasibly vested in the beneficiary shall terminate twenty-one (21) years after the date of the death of the survivor of me and all of my descendants who are alive on the date of execution of this trust instrument. Upon such termination the Trustee shall distribute the then remaining principal and undistributed income of such trust to the person or persons to whom the income payments could be made under such trust immediately prior to its termination, such persons, if there be more than one who are descendants of mine, to take per stirpes.

## **ARTICLE VII**

### **PROVISIONS RELATING TO DISCRETION OF TRUSTEE**

A. Discretionary Accumulation of Income. To the extent that the Trustee is not required to make distributions of the net income of a trust, the Trustee is authorized, in the Trustee's discretion, (i) to accumulate such net income and at any time thereafter to allocate and distribute all or any portion of such net income to the beneficiaries eligible to receive the same in such proportions as the Trustee may determine, or (ii) to accumulate income without allocation and at any time thereafter to add such income so accumulated to the principal of the trust.

B. Protective Trust Provisions. No beneficiary of any trust created under this instrument shall have the power to anticipate, encumber, or transfer any interest in the trust estate in any manner. No part of any trust estate shall be liable for or charged with any debts, contracts, liabilities, or torts of a beneficiary or be subject to seizure or other process by any creditor of a beneficiary. Notwithstanding the foregoing, if any beneficiary of any trust created under this instrument shall attempt to anticipate, pledge, assign, sell, transfer, alienate or encumber his or her interest in the income or principal of such trust; or if any creditor or claimant shall attempt to subject such interest to the payment of any debt, liability or obligation of any such beneficiary; or if such beneficiary shall be subject to bankruptcy, insolvency or receivership proceedings, thereupon any absolute right of such beneficiary to income or principal from such trust shall cease. Thereafter, and until such time as the Trustee is able to distribute such property to such beneficiary, the Trustee may accumulate trust income, if any, to which such beneficiary would otherwise be entitled or the Trustee may distribute the same to the other beneficiaries, if any, of the trust entitled to receive such income and shall be held harmless in making such discretionary distributions. In no event shall the Trustee be required or compelled to pay any income or principal to or for the benefit of such beneficiary, and, upon the death of such beneficiary, any property held or accumulated in his or her trust shall be distributed in accordance with the provisions provided for principal dispositions at his or her death.

C. Limitations on Trustee in Exercising Discretion. Notwithstanding any other provision of this trust instrument, a Trustee shall not possess or participate in the

exercise of any discretionary power granted to a Trustee to make distributions of net income or principal of a trust (i) to himself or herself or to any other person or institution which have the effect of discharging such Trustee's individual legal obligation or (ii) which would constitute a gift for federal gift tax purposes by such Trustee. The foregoing limitation is not intended to prohibit a Trustee who is a beneficiary of a trust from possessing or participating in the exercise of a power to distribute property to such Trustee pursuant to an ascertainable standard within the meaning of Section 2041 and Section 2514 of the Code, or which would nevertheless be includible in such Trustee's gross estate for estate tax purposes. The purpose of this provision is to prevent a Trustee who would not otherwise be taxed from being taxed because of such a power and to avoid the appointment of a special fiduciary under New Hampshire law, if possible, and it should be so construed.

D. Flexibility Provisions. I hereby grant to the Trustee the powers described in the following paragraphs, which powers may be exercised at any time (and from time to time) and may be terminated by the Trustee at any time.

1. The then acting Trustee may, from time to time, notwithstanding any other provision of this instrument, and in addition to any other powers herein provided to the Trustee, amend or restate this instrument, including its dispositive, administrative and other provisions of all kinds, as hereinafter provided in this Paragraph; provided, that this power to amend shall not apply to any Trustee who has ever made a transfer to such trust that has constituted a gift for federal gift tax purposes, or who is a beneficiary of such trust. Such amendment or restatement shall be effective with respect to such trust, as well as to all trusts that are subsequently to come into existence under this instrument to hold part or all of the assets of such trust ("trusts that result from such trust"). The purposes for which an amendment or restatement to this instrument may be made pursuant to the preceding paragraph are to permit such Trustee:

a. To deal more effectively with tax and/or other circumstantial changes that may affect such trust and/or its beneficiaries;

b. To take advantage of changed trust drafting approaches to deal more effectively with potential trust problems, or otherwise to improve the clarity and administerability of the trust provisions; and/or

c. To remove from the governing trust instrument any provisions which have become "deadwood" (i.e., no longer operative in the ongoing administration of such trust due to changed circumstances).

2. The power of amendment granted under this Paragraph may be exercised in whatever way or ways such Trustee, in the exercise of such Trustee's sole discretion, may deem appropriate and in the best interests, as interpreted by such Trustee alone, of the primary beneficiary or beneficiaries of such trust and of each such beneficiary's family as a whole. Such Trustee shall be guided by what, in the sole judgment of such Trustee alone, would apparently be my original intent hereunder in the



light of the circumstances then existing. This power of amendment shall include, by way of example and not limitation, the power to:

a. Grant, increase, reduce, or eliminate general (as defined in Code Section 2041) and special powers of appointment with respect to part or all of any trust property (such powers may be made subject to any conditions or consents and limited to such objects as may be described in the grant or reduction of each power);

b. Add mandatory distribution or set aside provisions for one or more beneficiaries or permissible distributees;

c. Divide a trust at any time (before or after it is funded with assets) into two or more separate trusts (representing fractional shares of any property being divided as provided in this trust agreement) or merge separate trusts together;

d. Restrict in any way, revocably or irrevocably, the future exercise of any power held by any beneficiary or beneficiaries and/or Trustee or Trustees hereunder; and

e. Provide for the creation of one or more separate subtrusts or subaccounts (equivalent to a separate trust) in any trust hereunder with respect to which subtrust or subaccount more restrictive or other administrative or dispositive provisions are made applicable in order to permit some or all of the properties or interests that may at any time be held in or allocable to that trust to be segregated and transferred to that subtrust or subaccount to achieve some tax or other benefit that would otherwise not be available to such property or interest or to the primary beneficiary or one or more of the other current beneficiaries of that trust - such as, by way of example and not limitation, to permit:

(1) Such property, interest, or beneficiary to qualify for any governmental or tax benefit, generation-skipping transfer tax exemption or Code Section 2032A election;

(2) A disclaimer to be made;

(3) Shares of S corporation stock to be held in a subaccount that satisfies the statutory requirements of a qualifying stockholder; or

(4) Certain property or assets of the trust to be disposed of in a more tax efficient manner or to be segregated from the other assets and property of the trust for liability protection, investment or other purposes.

3. Notwithstanding the foregoing, however, under no circumstances shall any such amendment, with respect only to any trust already in existence hereunder (i.e., to which property has already been transferred) at the time of such amendment:

a. Diminish or eliminate in any way (that is not controlled by the beneficiary) any enforceable right any beneficiary may already have (under the then terms of this instrument) to receive the income or principal of any trust, currently or at any time in the future; however, to the extent that an amendment benefits or grants a power to any beneficiary of a trust, it may diminish or eliminate the rights of one or more beneficiaries to receive in the future the income or principal of that trust or of any trusts that result from that trust;

b. Reduce in any way the restrictions or limitations on:

(1) Fiduciary actions as set forth in this agreement;

(2) The Trustee's limited power of amendment under this Paragraph; or

(3) Who (or what institutions) can qualify to fill any office of trustee hereunder,

unless as a result of some change in the federal tax laws, regulations, or rulings on which taxpayers may rely, such reduction of restrictions and/or limitations will no longer have any adverse wealth transfer tax effect on such trust, any person who directly or indirectly has transferred assets to it, or any of its beneficiaries [all of which provisions, referred to in (1), (2) and (3) above, may, however, be amended, irrevocably and binding on successors, to increase such restrictions and limitations in any way such Trustee may deem appropriate];

c. Give anyone acting in a nonfiduciary capacity any powers granted herein to fiduciaries, unless, as a result of a change in law (as described in subparagraph b. above), such amendment will no longer have any adverse wealth transfer tax effect on such trust, any person who has transferred property to it by gift, or any of its beneficiaries;

d. Result in any direct or indirect financial benefit (or grant any power of appointment) to any individual who is not at the time of such amendment both:

(1) A member of my family (meaning any of my lineal descendants or spouse of any of my lineal descendants); and

(2) Already a present or potential future beneficiary of such trust (other than merely through the exercise of a power of appointment), unless the amendment is to provide for afterborn or after-adopted children of any such beneficiary;

e. Discriminate in any significant financial way in favor of one or more siblings to the detriment of any other sibling(s) where such siblings are, under the terms of this instrument, to be treated in substantially equal fashion (for this purpose treating each sibling, his or her spouse and descendants and their spouses as one unit); or

f. Make any change that would have the effect of disqualifying any such trust insofar as such trust, prior to such amendment, otherwise qualified for and was in fact already taking advantage of, while such advantage otherwise will continue:

(1) Any exemption from a surviving spouse's elective right or from any creditor's right to levy on any beneficiary's interest in any such trust; or

(2) Any substantial deduction, credit, exclusion, or other tax benefit (such as any marital or charitable deduction, any annual gift tax exclusion, a Code Section 2032A election, a Code Section 2057 election, a generation-skipping tax exemption, the opportunity to be a stockholder in an S corporation, a significant grandfathered status under some changed law, and so on). However, this subparagraph b shall not preclude any amendment that would change any provisions of this agreement that result (or might result) in the trust involved giving rise to any adverse income or estate tax purposes for either me or my spouse or for any beneficiary hereunder, even if the effect of such change might (i) be to subject the trust or its beneficiaries (rather than any donor) to any type of income, estate, or other tax on that trust's receipts and/or assets, or (ii) result in the loss of any tax benefit otherwise available to that trust or its beneficiaries, as long as the Trustees making such amendment reasonably believe that, under all of the circumstances, (a) such change is necessary to properly reflect the original intent of each person who has made any gift to the trust as to the effect of the pre-change trust provisions on the taxability of the trust and its beneficiaries, including the consequential effect of credits, deductions, cost basis stepups, etc., or (b) in the case of an adverse income tax effect only, such change would be in the general long term best interests of the trust involved and its beneficiaries.

4. Any such amendment shall be by written instrument, executed by such amending Trustee with all the formalities of a deed, setting forth the trust or trusts hereunder to which the amendment applies and the effective date of such amendment.

5. No Trustee shall be liable for any exercise of or failure to exercise this limited power of amendment (or for a release of this power) if such Trustee acted in good faith in taking or failing to take any such action (whether or not requested to do so by any beneficiary or any beneficiary's representative). In addition, the Trustee shall be authorized, in its discretion, to advise and consult with legal counsel, and to obtain a legal opinion therefrom, regarding any potential exercise or non-exercise of such power of amendment and shall not be liable for or chargeable with any action taken or not taken in reliance on such consultation or opinion. The cost of such consultation and/or opinion shall be paid from the assets of the trust.

6. Further, in addition to the powers granted hereinabove to the Trustee, in the case of each separate trust at any time in existence hereunder, such trust's then acting Trustee, other than any Trustee (1) who has ever made a transfer to such trust that constituted a gift for federal income tax purposes or (2) who is a beneficiary of such trust, shall have the power to distribute all of the income and principal of such trust created herein to any other trust for the primary benefit of the beneficiary or beneficiaries

of such trust created herein, whether or not then living (even one created by anyone including the Trustee), whether now existing or hereafter created [except (A) any trust which is hereafter created by a grantor of such trust created herein and (B) any trust as to which a grantor has a beneficial interest or any power which could affect beneficial enjoyment], provided that (i) any such newly created trust does not allow any person who is not a beneficiary or potential future beneficiary of such trust created herein (other than merely through the exercise of a power of appointment) to receive the income or principal of the property thus distributed to such new trust and (ii) during a grantor's lifetime, any such trust is governed by an irrevocable trust instrument executed prior to or concurrently with this trust instrument.

## **ARTICLE VIII**

### **ADMINISTRATIVE POWERS OF TRUSTEE**

In the management, care and distribution of each trust created hereunder, I confer upon the Trustee of such trust, and any successor Trustee, all of the powers set forth in New Hampshire Uniform Trust Code. These powers are granted to the Trustee shall be in addition to, and not in limitation of, the provisions of New Hampshire General Statutes Chapter 564-B:8-816. In addition to the powers incorporated by reference above or conferred elsewhere in this trust instrument, I grant to the Trustee the discretionary powers set forth below to be exercised without court order for any purpose that the Trustee may deem advisable:

A. Investments. The power to acquire and retain for any period of time as investments, without diversification as to kind or amount, any real or personal property or interest in such property (including an undivided, temporary or remainder interest), whether or not originally received by the trust or subsequently acquired, income or non-income producing, or located within or outside the United States, and including, but not limited to, notes, bonds, debentures, mortgages and other obligations, secured or unsecured, common and preferred stocks, mutual funds, common trust funds, general and limited partnership interests, limited liability company membership interests and leases;

B. Sale or Other Disposition of Property. The power to sell, exchange, convert, partition or abandon or otherwise dispose of, or grant options with respect to, any real or personal property at public or private sale or otherwise, upon any terms and conditions, including credit, with or without security;

C. Management of Property. The power to take possession, custody and control and otherwise manage any real or personal property, including, but not limited to, the power (i) to protect, develop, subdivide and consolidate such property, (ii) to lease such property upon any terms and conditions, including options to renew or purchase, and for any period or periods of time although such period or periods may extend beyond the duration of the trust, and to modify, renew or extend any existing leases, (iii) to erect, repair, or make improvements to any building or other property and to remove existing structures, (iv) to establish and maintain reserves for the maintenance, protection and improvement of such property and for other purposes, (v) to initiate or continue farming,

mining or timber operations on such property, (vi) to purchase and carry casualty and liability insurance, (vii) to grant or release easements with respect to such property, (viii) to dedicate or withdraw from dedication such property from public use, and (ix) to join with co-owners in exercising any such powers;

D. Business Interests. The power to continue to own, or to form initially, and operate any business interest, whether in the form of a proprietorship, corporation, general or limited partnership, limited liability company, joint venture or other organization, including, but not limited to, the power (i) to effect incorporation, dissolution or other change in the form of the organization of such business interest, (ii) to dispose of any part of such business interest or to acquire the interest of others, (iii) to continue, enter into, modify or terminate any agreements relating to any such business interest, (iv) to invest capital or additional capital in or lend money to such business interest, and (v) to exercise powers concerning such business interest notwithstanding the fact that a conflict of interest as a fiduciary and as an individual may exist;

E. Borrowing Money. Subject to Paragraph M, the power (i) to borrow money for the benefit of the trust from the Trustee individually or from others, upon any terms and conditions, (ii) to secure the payment of any amount so borrowed by mortgaging, pledging or otherwise encumbering any real or personal property, and (iii) to modify, renew or extend the time for payment of any obligation, secured or unsecured, payable by the trust, for any period or periods of time and upon any terms and conditions;

F. Lending Money. Subject to Paragraph M, the power (i) to lend money to any person upon any terms and conditions, (ii) to modify, renew or extend the time for payment of any obligation, secured or unsecured, payable to the trust for any period or periods of time and upon any terms and conditions, (iii) to foreclose as an incident to the collection of any obligation, any deed of trust or other lien securing such obligation, (iv) to bid on the property at such foreclosure sale or otherwise acquire the property without foreclosure and to retain the property so obtained;

G. Holding Property in Nominee Form. The power to register and hold any securities or other property in the name of a nominee or in any other form without disclosure of the fiduciary relationship, or to hold the same unregistered in such form that they will pass by delivery, but no such registration or holding shall relieve the Trustee from responsibility for the acts of the nominee;

H. Exercise of Security Rights. With regard to securities, including stocks, bonds and any evidence of indebtedness, the power (i) to vote any such securities in person or by special, limited or general proxy at any shareholders' meeting, with or without the power of substitution, (ii) to consent to or participate in any contract, lease, mortgage, foreclosure, voting trust, purchase, sale or other action by any corporation, company or association, (iii) to consent to, participate in, facilitate or implement any plan of incorporation, reincorporation, reorganization, consolidation, merger, liquidation, readjustment or other similar plan with respect to any such corporation, company or association, and (iv) to exercise all options, rights and privileges, including the exercise

or sale of conversion, subscription or other rights of whatever nature pertaining to any such securities and to subscribe for additional securities or other property;

I. Banking Transactions. The power (i) to open, deposit cash or other assets to the credit of and maintain one or more checking, savings, cash, margin or other account in any banking, trust, brokerage or investment institution, including any corporate Trustee, (ii) to exercise any right, option, or privilege pertaining to any such account, and (iii) to lease one or more safe deposit boxes for safekeeping of trust assets;

J. Collection of Death Benefits. The power (i) to collect the proceeds of any life insurance policy or other contract providing for death benefits, including individual retirement accounts and qualified plans, and (ii) to elect any mode of payment available under any such policy or contract;

K. Action on Claims. The power to compromise, settle, adjust or arbitrate, sue on, recover damages for, defend, abandon or otherwise deal with any claim or demand in favor of or against the trust upon any terms and conditions;

L. Employment of Advisors. The power to employ persons, firms and corporations to advise or assist in the proper administration of the trust or otherwise, including, but not limited to, agents, accountants, auditors, brokers, attorneys-at-law, attorneys-in-fact, custodians, investment counsel, rental agents, realtors, appraisers and tax specialists, and to charge the expense of such employment to the trust;

M. Dealing With Estates and Trusts. The power to sell any property to, or to purchase any property from, any other trust created hereunder or created by me during life, or my estate or the estate of any descendant of mine, or any trust created by any descendant of mine by will or during life, at the fair market value thereof, or to lend money to any such estate or trust at an adequate rate of interest and with adequate security, as determined by the Trustee, even though the same person or corporation may be acting as Trustee of any of such other trusts or as an Executor of any such estates and as Trustee hereunder;

N. Division or Distribution of Assets. Whenever authorized or directed to divide or distribute trust property, the power to make such division or distribution (including the satisfaction of any pecuniary sum) in cash or in specific property, real or personal, or an undivided interest in such property, or partly in cash and partly in specific property, without obligation to make pro rata distributions of specific assets and without liability for, or obligation to make compensating adjustments by reason of, disproportionate distributions of unrealized gain for income tax purposes, except that any assets so distributed in kind shall be valued at their date or dates of distribution values;

O. Credits or Charges to Income and Principal. The power to determine whether items should be charged or credited to income or principal, or be apportioned between income and principal, including without limitation the power to amortize or not to amortize any part or all of any premium or discount, to treat any part or all of any profit resulting from the sale or other disposition of any property, whether purchased at a

premium or at a discount, as income or principal or apportion the same between income and principal, to apportion the sales price of any property between income and principal, including the proceeds of the sale of timber, minerals and other natural resources, to treat any dividend or other distribution on any investment as income or principal or apportion the same between income or principal, to charge any expense against income or principal or apportion the same and to provide or not to provide a reasonable reserve against depreciation, depletion or obsolescence on any property subject to depreciation, depletion or obsolescence. The Trustee shall exercise the Trustee's discretion in such manner as the Trustee may reasonably deem equitable and just under all the circumstances and regardless of whether such items are charged or credited to or apportioned between income and principal as provided in the New Hampshire Uniform Trust Code;

P. Distributions to or for the Benefit of Beneficiaries. Whenever authorized or directed to distribute property to a beneficiary, whether or not under a legal disability, the power to distribute such property, unless otherwise directed, (i) directly to such beneficiary, including the transfer of property into such beneficiary's name as by depositing cash or registering securities in his or her name, (ii) to the custodian of such beneficiary under a uniform gifts or transfers to minors act, (iii) to the legal or natural guardian of the person or property of such beneficiary, or (iv) to any other person, firm or institution for the benefit of such beneficiary, and the receipt of any of the foregoing shall constitute a full acquittance of the Trustee to the extent of the distribution so made;

Q. Holding Assets of Separate Trusts Undivided. The power to acquire, receive, hold and administer property of two or more separate shares or trusts undivided so long as separate accounts are maintained at all times for each of the separate shares or trusts;

R. Consolidation of Similar Trusts. The power to add the assets of any trust established under this trust instrument (except a trust which is eligible to qualify for the marital deduction in the federal estate tax proceeding relating to my estate) to the assets of any other trust established under this trust instrument or any trust established outside of this instrument and administer them as one trust when such trusts have substantially similar terms and identical beneficiaries and Trustees provided such consolidation does not (i) defeat or impair any beneficial interest or (ii) cause the inclusion ratio of either trust for federal generation-skipping transfer tax purposes to change from zero to a number greater than zero;

S. Creation of Subtrusts and Subaccounts. The power to create one or more separate subtrusts or subaccounts (equivalent to a separate trust, including trusts with their own separate tax identity) in any trust hereunder, revocable or irrevocable, in order to permit some or all of the properties or interests that may at any time be held in or allocable to that trust to be segregated and transferred to that subtrust or subaccount to achieve some tax, investment or other benefit that would otherwise not be available to such property or interest or to the primary beneficiary or one or more of the other current beneficiaries of that trust;

T. Separation of Trust Property for Generation-Skipping Transfer Tax "GST" Purposes. The power (i) to separate trust property into separate shares or trusts either before or after an allocation of GST exemption to a separate share or trust so that the separate share or trust will be created having property equal in value to the amount of the exemption as of the valuation date for such allocation in order that such separate share or trust will have an inclusion ratio of zero, (ii) to hold as a separate trust property to be added to another trust which is subject to different treatment for GST purposes than the property which is to be added to it and to administer such trust, as well as the trust to which the property would have been added, in accordance with the provisions that would have governed the combined trusts, and (iii) to divide any trust into separate fractional shares and hold such shares in separate trusts with identical terms whenever the division may facilitate avoiding or delaying GST, including the division of a trust with an inclusion ratio of more than zero into two separate trusts, one with an inclusion ratio of one and the other with an inclusion ratio of zero;

U. Execution and Delivery of Documents. The power to execute and deliver, modify, or rescind any and all instruments, under seal or otherwise, including, but not limited to, contracts, deeds, leases and notes, to carry out the administration of the trust;

V. Tax Elections. The power to make any election permitted by any tax law, including the authority to elect or maintain S corporation status for federal tax purposes for any corporation in which the trust may own an interest, if the Trustee determines such election is for the combined best interest of the trust and the beneficiaries thereof, and shall be authorized to make, or not to make, such adjustments among the interested parties or shares as such Trustee may reasonably deem equitable and just under all the circumstances. The Trustee shall also be authorized, but not required, for tax, administrative or investment purposes to divide any trust established hereunder at any time, based upon the fair market values of the trust property at the time of such division, into two or more separate trusts, the dispositive provisions of which shall be identical to those applicable to the trust prior to any such division, and to consolidate any trust established hereunder with any other trust having substantially identical provisions for the same beneficiary or beneficiaries if such consolidation does not (i) defeat or impair any beneficial interest or (ii) cause the inclusion ratio of either trust for federal generation-skipping transfer tax purposes to change from zero to a number greater than zero. Without limiting the generality of the foregoing, the Trustee may divide any trust to be established hereunder into separate trusts consisting of portions that would, and would not, respectively, be included in the gross estate of any beneficiary hereunder for federal estate tax purposes if such beneficiary died immediately prior to the division or portions each of which for federal generation-skipping transfer tax purposes has an inclusion ratio of either zero or one or portions which for federal generation-skipping transfer tax purposes have different transferors; and

W. Indemnification. The Trustee (and every present or former officer, employee and affiliate of the Trustee) shall not be liable for and shall be indemnified out of the principal and income of the trust against the consequences (including legal and other expenses) of any act or omission of itself or any agent, delegate or adviser, whether affiliated or unaffiliated, or any answer to any inquiries or generally any breach of any duty or trust unless it shall constitute fraud on the part of the Trustee or shall prove to



have been made, given, or omitted in bad faith or with a sufficient absence of care to constitute reckless indifference on the part of the Trustee itself or its officers or employees of the duties and obligations imposed by this Agreement.

## **ARTICLE IX**

### **SPECIAL PROVISIONS RELATING TO LIFE INSURANCE**

The following provisions relate to life insurance policies owned by the trust:

A. Acquisition and Maintenance of Life Insurance Policies. The Trustee is authorized to apply for and maintain one or more insurance policies as an investment and to hold them in accordance with the provisions of this Trust. I also explicitly acknowledge and authorize the Trustee and its affiliates, related entities, and officers to act as agent for the acquisition of life policies for this trust, to be paid commissions for doing so, and waive any conflict-of-interest this may create.

1. As to each insurance policy owned by the Trustee, whether purchased by the Trustee or transferred to the Trustee:

(a) The Trustee shall have all the rights of an absolute owner, including the right to borrow money upon the insurance policy, to enter into any "split-dollar" arrangement with respect to the insurance policy, to collaterally assign any insurance policy benefits pursuant thereto and to terminate any such arrangement by "roll-out" or otherwise, to effect a change of beneficiary, to exercise all conversion rights, to hypothecate the same to secure any loans, to receive all dividends, refunds, disability payments, cash surrender values or other payments which may accrue or be made during my life, to receive and exercise all benefits and privileges with respect thereto, and generally to exercise all rights of an owner of the insurance policy. The Trustee is authorized to execute all necessary documents with respect to the insurance policy, including receipts and releases to the insurer.

(b) The Trustee is authorized, but is under no obligation, to pay the premiums, dues, assessments or other charges which become due and payable with respect to the insurance policy. The Trustee shall not be obligated to see that such payments are made by any person, or to notify me or any other person that such payments are or will become due, and the Trustee shall be under no liability to anyone in case such premiums, dues, assessments or other charges are not paid, or for any result of the failure to make such payments.

(c) The Trustee shall have no duty (i) to monitor the financial stability of any insurance company that has issued the insurance policy, and the Trustee shall not be liable to any person by reason of the insolvency of any issuer of the insurance policy except to the extent that applicable law imposes such obligations or liabilities; (ii) to monitor the investment performance or other features of a insurance policy or to compare such performance or features to that of other available insurance policy; or (iii) to diversify a trust's holdings that consist of a insurance policy or insurance policies (or

any interest received in exchange for an assignment of an interest in a insurance policy), either by acquiring additional insurance policy or by acquiring other types of assets, and the Trustee is authorized to hold the entire trust in a single insurance policy issued by one carrier.

2. Without limitation on the generality of the foregoing, the Trustee is expressly authorized (but is under no obligation) to enter into a premium finance transaction involving the acquisition of an insurance policy.

B. Restrictions Concerning Life Insurance Policies. Notwithstanding the foregoing,

1. If an income beneficiary has a power to appoint trust property, such power shall not be applicable to any policy on such beneficiary's life, and such policy and its proceeds shall be disposed of as if the power had not been exercised with respect to such policy or its proceeds;

2. An individual Trustee whose life is insured shall have no right, but the other Trustee or Trustees, if any, shall have the sole right to exercise the powers of a Trustee concerning any such policy, including the exercise of any incidents of ownership with respect to such policy.

C. Collection of Death Benefits. Following my death, the Trustee shall collect any and all death benefits and other property to be distributed to the Trustee by reason of such death; provided the Trustee shall not be required to institute proceedings to collect such benefits without indemnification satisfactory to the Trustee for any resulting expense, including, without limitation, counsel fees. In the collection of the proceeds payable under any life insurance policies, payment to and receipt by the Trustee shall be a full discharge of the liability of any insurance company, and any such company need not take notice of this instrument or see to the application of any such payment by the Trustee.

## ARTICLE X SPECIAL PROVISIONS TO DELAY DISTRIBUTION

It is my intent that after my death, the trust property be available to lend money to my estate and to purchase real or personal property from my estate. Therefore, notwithstanding any other provision of this trust instrument, the Trustee may, in the Trustee's discretion, delay distributing trust assets after my death until the administration of my estate is completed.

**ARTICLE XI**  
**SUCCESSOR TRUSTEE AND**  
**OTHER ADMINISTRATIVE PROVISIONS**

The procedure for resignation of the then acting Trustee of any separate trust without court order and for the appointment of a successor Trustee without court order, as well as other administrative provisions relating to the Trustee, shall be as follows:

A. Resignation of Trustee. A Trustee shall have the right to resign at any time by giving written notice to his or her co-Trustee or the successor Trustee designated below or, if none, to the person or persons designated below who are authorized to appoint a successor Trustee. Such resignation shall become effective upon delivery of the resignation to the other then acting Trustee or Trustees, if any, and, if none, acceptance of the trusteeship by a successor Trustee.

B. Appointment of Successor Trustee. If the last then acting Trustee (or any successor thereto appointed as provided herein) fails or ceases to act as Trustee (the "retiring Trustee"), a successor Trustee may be appointed as follows:

1. A majority of the beneficiaries to whom the income of the trust could then be paid shall have the right to appoint a successor Trustee. If a beneficiary is a minor or not competent, the appointment on his or her behalf may be made by a person (other than me) who is (i) the guardian of the beneficiary's estate or, if none, (ii) a parent of the beneficiary or, if no such parent is living and competent, (iii) the guardian of the person of the beneficiary.

2. Any successor Trustee appointed pursuant to this Article must be (i) an association, a corporation or a company qualified to exercise trust powers or (ii) an individual (other than me or my spouse), and under no circumstances shall I or my spouse have the power to appoint a successor Trustee.

3. The appointment of any successor Trustee shall be effected by an instrument which has been signed by the person or persons having the right of such appointment and which has been delivered to such successor Trustee and to the then acting Trustee, if any. A retiring Trustee shall have the right to make such appointment by last will or codicil thereto, making reference to the power to appoint a Trustee, if the vacancy occurs as a result of the death of such retiring Trustee.

C. Appointment of Co-Trustee. Notwithstanding any other provision in this Article to the contrary, any then acting Trustee shall have the right to appoint a co-Trustee. The appointing Trustee shall have the right to remove such appointed co-Trustee at any time by giving written notice of such removal to the co-Trustee.

D. No Requirement of Successor Trustee to Audit. No successor Trustee shall be required to review or audit the accounts and transactions or otherwise to inquire into any act or omission of any predecessor Trustee or to assert any claim against such predecessor or his or her estate and shall not be liable for any acts or omissions of any predecessor Trustee.

E. Powers of Successor Trustee. Any successor Trustee may exercise all the powers and authority conferred upon the original Trustee, including the right to resign.

F. Exercise of Powers by Co-Trustees. Whenever two or more Trustees are acting under this trust instrument, any individual Trustee shall have the power without court order at any time and from time to time to delegate to the other Trustee or Trustees any or all of the Trustee's powers as co-Trustee. The power of delegation shall be exercised by the Trustee by delivery to the other Trustee or Trustees of written notice specifying the powers delegated. Such delegation shall remain effective for the time specified in the notice or until earlier termination by the delegating Trustee by delivery to the other Trustee or Trustees of written notice of termination. The delegating Trustee shall not be liable with respect to the exercise or nonexercise of powers delegated during the period of delegation.

G. Other Provisions Regarding Trustee.

1. No Trustee acting hereunder who is a natural person shall be entitled to receive compensation for his or her services as Trustee hereunder, but shall be entitled to reimbursement for any out-of-pocket expenses reasonably incurred in the administration of the trust. A corporate Trustee may receive compensation for its services in accordance with its published schedule of fees in effect at the time the services under this trust instrument are rendered or as provided in a separate fee agreement. Until my death, Noble Trust Company shall receive an annual fee of \$1,500 to administer the trust so long as it is Trustee, such fee to be collected solely from the assets of the trust. Noble Trust Company may not be removed as Trustee during my life except in the event of their bankruptcy, dissolution, voluntary resignation or removal by a court of competent jurisdiction. If Noble Trust Company is removed as Trustee by any means, except in the event of their bankruptcy, dissolution, voluntary resignation or removal by a court of competent jurisdiction and Noble Trust Company has at any time extended financing to the trust in connection with the acquisition and maintenance of life insurance policies, they shall be entitled to a termination fee equal to five (5%) percent of the trust's fair market value as of the date of Noble Trust Company's removal as Trustee.

2. No bond or other security shall be required from any Trustee. Any Trustee may act without qualifying before any court or filing with any court any inventory, accounting or other report relating to the administration of the trust unless otherwise required by law to do so.

3. No person or institution dealing with the Trustee shall be required to see to the application of any money or other property delivered to the Trustee or to inquire into the necessity or propriety of any action taken or not taken by the Trustee.

4. The Trustee shall furnish upon request, at least annually, accounts of receipts and disbursements of trust property to each beneficiary to whom income of the trust could then be paid who is not under any legal disability and to each person (other than a governmental authority) having custody of any such beneficiary who is under a legal disability.

**ARTICLE XII**  
**PRESUMPTION OF SURVIVORSHIP**

If any beneficiary under this trust instrument and I should die under such circumstances that there is uncertainty as to which person predeceased the other, it shall be conclusively presumed for the purposes of this trust instrument that such beneficiary predeceased me.

**ARTICLE XIII**  
**DEFINITIONS**

For purposes of this trust instrument,

A. "Child," "Children" and "Descendants". The terms "child" and "children" mean lawful lineal blood descendants in the first degree of the parent designated, and the term "descendants" means lawful lineal blood descendants in any degree of the ancestor designated, but such terms shall include any person legally adopted prior to the time that person reaches the age of eighteen (18) and the lawful lineal descendants of any such person, whether of the blood or by adoption prior to such age.

B. "Incapacitated" or "Not Competent". An individual shall be deemed "incapacitated" or "not competent" under any one or more of the following circumstances: (i) during any period that the individual is legally incompetent as determined by a court of competent jurisdiction; (ii) during any period beginning when two physicians licensed to practice medicine certify in writing that, in their opinion, the individual, as a result of illness, age or other cause, no longer has the capacity to act prudently or effectively in financial affairs and continuing until two such physicians (whether or not those making the initial determination) certify in writing that, in their opinion, the individual's capacity is restored; or (iii) during any period that a person (other than such individual) or an institution who is a Trustee, or, if none, who is designated as a successor Trustee, or, if none, who can appoint a successor Trustee, has evidence that the individual is absent without explanation or is being detained against his or her will under circumstances in which he or she does not have the capacity to act prudently or effectively in financial affairs.

C. "Per stirpes". Whenever property is to be divided among an individual's then living descendants, "per stirpes," the property shall be divided into as many equal shares as there are children of the individual who are then living or who have died leaving issue then living. A share allocated to a deceased child of the individual shall be divided further among such deceased child's then living descendants in the same manner.

**ARTICLE XIV**  
**APPLICABLE LAW**

Subject to Paragraph E of the Article entitled "Successor Trustee and Other Administrative Provisions," the situs of this trust shall be the State of New Hampshire, and

the validity and construction of the trust, and the rights of the beneficiaries hereof, shall be governed by the laws of the State of New Hampshire. The Trustee may at any time change the situs of this Trust, or any sub trust (and to the extent necessary or appropriate, the Trust assets) to a state or country other than the one in which the trust is established or then administered. The Trustee may elect that the law of such other jurisdiction shall govern the Trust to the extent necessary or appropriate under the circumstances.

#### **ARTICLE XV** **IRREVOCABILITY**

The trust shall be irrevocable, and I hereby acknowledge that I shall have no right or power, whether alone or in conjunction with others, in whatever capacity, (i) to amend or revoke the trust or any of the terms of this instrument, in whole or in part, or (ii) to designate the persons who shall possess or enjoy the trust property or the income from it.

#### **ARTICLE XVI** **DISCLAIMERS**

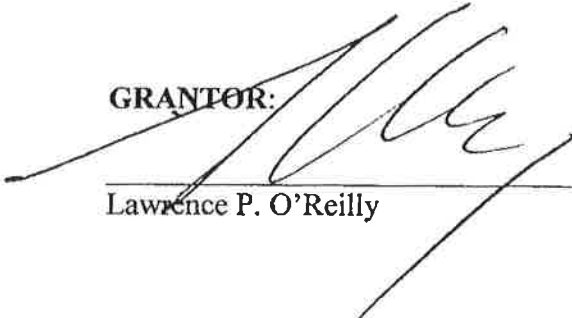
Any beneficiary or the legal representative of any deceased beneficiary shall have the right, within the time prescribed by law, to disclaim any benefit or power granted hereunder. Any transfer taxes incurred at my death and attributable to a qualified disclaimer of property included in my gross estate shall be paid from the disclaimed property. The transfer taxes attributable to a qualified disclaimer shall be the difference between (1) the actual taxes payable at my death and (2) the taxes that would be payable if the disclaimer were not made.

#### **ARTICLE XVII** **IN TERROREM CLAUSE**

If any person for any reason or in any manner whatever, directly or indirectly, contests the provisions of this trust in whole or in part, on any ground whatever, or opposes or objects to any of the provisions hereof or seeks to invalidate any such provisions, then such person shall neither take nor receive anything from this trust, and any gift or other interest in this trust to which such person would otherwise be entitled by virtue of the provisions hereof shall be revoked and be canceled and rendered void and of no effect whatever, and the Trustees shall give the same to those persons who would be entitled thereto under the provisions of this trust had such person predeceased the Grantor without issue.


The Trustee and I have signed and sealed this instrument on the 8<sup>th</sup> day of October, 2007.

**GRANTOR:**

  
\_\_\_\_\_  
Lawrence P. O'Reilly

**TRUSTEE:**

NOBLE TRUST COMPANY

  
By: Lisa Ordway  
Its: Chief Operations Officer

STATE OF FLORIDA  
COUNTY OF FLAGLER

I, MARIE CROSS, a Notary Public for said County and State, do hereby certify that Lawrence P. O'Reilly personally appeared before me this day and acknowledged to me the voluntary execution of the foregoing instrument for the purposes stated therein and in the capacity indicated.

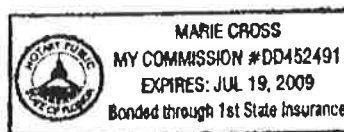
WITNESS my hand and notarial seal, this the 2 day of October, 2007.

(SEAL)

SIGNED: Marie Cross  
Notary Public

My Commission Expires:

July 19, 2009



STATE OF NH  
COUNTY OF Hillsborough

I, \_\_\_\_\_, a Notary Public of the said County and State, do hereby certify that Lisa Ordway, officer of NOBLE TRUST COMPANY, a New Hampshire corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said corporation.

WITNESS my hand and notarial seal, this the 8<sup>th</sup> day of October 2007.

(SEAL)

SIGNED: Amanda D  
Notary Public

My Commission Expires:

AMANDA DRESSER, Notary Public  
My Commission Expires June 13, 2012



EXHIBIT A  
SURVIVOR'S TRUST  
DISTRIBUTION OF TRUST AFTER DEATH  
OF GRANTOR

Upon my death, the Trustee shall invest the corpus of the trust and shall pay income annually from the trust to my spouse if living. At the death of my spouse, or at the time of my death if my spouse is not then living, the Trustee shall divide and allocate the trust principal, including any accumulated and undistributed income, into as many equal separate trusts as there are children of mine then living and deceased children of mine with descendants then living. The Trustee shall hold the trust share of any living child of mine for the benefit of said living child and, during the life of such child shall distribute the net income from said trust to said child, not less frequently than annually. Upon the death of a child their trust share shall be divided into as many equal separate trust shares as they have children. The Trustee shall hold the trust share of any grandchild of mine for the benefit of said grandchild, and during the life of such grandchild the Trustee shall distribute the net income of that trust share to that grandchild not less frequently than annually. If a child of mine should have no living descendants at their death, then their trust share is to be divided among my then living descendants, per stirpes. At the death of a grandchild their trust share shall be distributed outright and free of trust to the then living descendants of the grandchild, per stirpes, or if no such descendants are then living to my descendants then living, per stirpes, subject to the provisions of Article V. In addition, if any share is distributable to a descendant of mine more remote than a child or grandchild of mine such share shall be distributable to such descendant outright and free of trust, subject to the provisions of Article V.



## THE [REDACTED] IRREVOCABLE LIFE INSURANCE TRUST #2

Ryan K. Crayne hereby declares that any and all property, real or personal, that may be transferred to him as Trustee hereunder, and all investments and reinvestments thereof, all additions thereof and all substitutions therefor (referred to herein as the "trust property") shall be held, IRREVOCABLY IN TRUST, as follows:

FIRST: This trust shall be known as "The [REDACTED] Irrevocable Life Insurance Trust #2."

SECOND: At any time within one hundred eighty days after this trust instrument is executed, the majority in number of [REDACTED] spouse, [REDACTED], and her children, [REDACTED], [REDACTED], [REDACTED], and [REDACTED], who are living and competent, may remove Ryan K. Crayne as the Trustee by a written notice delivered to Ryan K. Crayne; provided, however, that no such removal shall become effective until a successor Trustee has accepted such office.

THIRD: The following provisions apply to the Trustee:

- (a) No Trustee serving hereunder shall be required to provide surety or other security on a bond.
- (b) No Trustee shall be responsible for or need inquire into any acts or omissions of a prior Trustee.
- (c) The Trustee may appoint any person as any additional Trustee to serve at the pleasure of the appointing Trustee.
- (d) If any action, suit or arbitration is brought against any Trustee, the Trustee may claim against the trust any costs of such an action and the Trustee is hereby indemnified against any expenses or liabilities arising from such actions.
- (e) The Trustee is authorized, and by extension any officer or related entity to the Trustee, to purchase, hold, and liquidate insurance policies for this trust from insurance providers and to be paid commissions for these activities.
- (f) A Trustee may delegate any powers and authorities to another Trustee for any period that the delegating Trustee may deem appropriate. A person dealing in good faith with any Trustee may rely without inquiry upon that Trustee's representation that a particular power or authority has been delegated and not rescinded. However, the Trustee may not delegate the entire Trust to a co-Trustee or other person.

- (g) Any Trustee may resign by giving written notice specifying the effective date of the resignation to each adult beneficiary to whom Trust income then may be distributed. A successor Trustee to fill any vacancy shall be named by majority vote of the adult beneficiaries to whom Trust income then may be distributed.
- (h) Each Trustee serving hereunder shall be entitled to receive reasonable compensation for services rendered.

FOURTH: Except as otherwise provided above, the trust property shall be held, administered and disposed of as provided in Article I, Articles 3 through 6, Paragraph E of Article 7, and Articles 8 through 12 of The [REDACTED] Irrevocable Life Insurance Trust, established by [REDACTED] on July 25, 2006 (the "2006 Trust"). A copy of the 2006 Trust is attached hereto, and Article 1, Articles 3 through 6, Paragraph E of Article 7, and Articles 8 through 12 of the 2006 Trust are incorporated herein by reference in their entirety. In said incorporated provisions, all first-person pronouns and the word "Grantor" shall refer to [REDACTED] the Grantor of the 2006 Trust, and in Paragraph F of Article 10, the reference to "the date this Trust is created" shall mean July 25, 2006.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Ryan K. Crayne, Trustee

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Ryan K. Crayne.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

THE [REDACTED] CS TRUST 2 (the "Trust")

Glenn A. Perlow, Bank Commissioner of the State of New Hampshire, as duly appointed Liquidator (the "Liquidator") of Noble Trust Company ("Noble"), acting on behalf of Noble pursuant to authority granted by the Merrimack County Superior Court by Order dated \_\_\_\_\_, 2013 entered in the civil proceeding entitled *In the Matter of the Liquidation of Noble Trust Company* (Docket No. 08-E-0053), and in accordance with the provisions of paragraph (j) of Article X of the Trust, hereby effects the resignation of Noble as the Protector of the Trust, and appoints Ryan K. Crayne as the successor Protector of the Trust.

Dated: \_\_\_\_\_, 2013

GLENN A. PERLOW, BANK  
COMMISSIONER OF THE STATE OF  
NEW HAMPSHIRE, AS LIQUIDATOR  
OF NOBLE TRUST COMPANY

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Acceptance by Successor Protector

The undersigned hereby accepts his appointment as successor Protector of the Trust.

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Ryan K. Crayne

THE [REDACTED] CS TRUST (the "Trust")

Glenn A. Perlow, Bank Commissioner of the State of New Hampshire, as duly appointed Liquidator (the "Liquidator") of Noble Trust Company ("Noble"), acting on behalf of Noble pursuant to authority granted by the Merrimack County Superior Court by Order dated \_\_\_\_\_, 2013 entered in the civil proceeding entitled *In the Matter of the Liquidation of Noble Trust Company* (Docket No. 08-E-0053), and in accordance with the provisions of paragraph (j) of Article X of the Trust, hereby effects the resignation of Noble as the Protector of the Trust, and appoints Ryan K. Crayne as the successor Protector of the Trust.

Dated: \_\_\_\_\_, 2013

GLENN A. PERLOW, BANK  
COMMISSIONER OF THE STATE OF  
NEW HAMPSHIRE, AS LIQUIDATOR  
OF NOBLE TRUST COMPANY

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Acceptance by Successor Protector

The undersigned hereby accepts his appointment as successor Protector of the Trust.

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Ryan K. Crayne

The [REDACTED]  
Irrevocable Life Insurance Trust  
*A Single Life Indenture*

I, [REDACTED] ("Grantor"), of [REDACTED] and Noble Trust Company of Manchester, New Hampshire ("Trustee"), make this Trust.

**Article 1**  
My Family

My husband is [REDACTED] and my children are [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

**Article 2**  
Transfers to the Trust

I transfer to the Trustee the property listed in Attachment A, and may transfer one or more life insurance policies, to be held on the terms and conditions set forth in this instrument. I retain no right or interest in any Trust assets.

**Article 3**  
Irrevocability

This Trust is irrevocable, and I cannot alter, amend, revoke, or terminate it in any way.

**Article 4**  
Annual Withdrawal Power

My beneficiaries shall have the right to withdraw a share of each contribution to the Trust (other than a contribution by reason of a transferor's death), subject to the limitations described later in this instrument.

**Article 5**  
Trust During My Life

During my life, the Trustee shall hold and administer all Trust funds remaining after the exercise or lapse of the withdrawal powers created earlier in this instrument, as described in this article.

- A. Life Insurance. The trustee may use some or all of the net income and principal of the Trust to buy and maintain policies of life insurance on my life, annually adding to principal any income not so used.
- B. Distributions. The Trustee shall distribute to or for the benefit of my spouse and beneficiary as much of the net income and principal of the Trust as the Trustee may deem appropriate for any purpose. The Trustee may distribute income and principal unequally and may make distributions to some beneficiaries and not to others.

## Article 6 Trust Upon My Death

Upon my death, the Trustee shall hold the Trust funds, including any funds received on account of my death, in trust ("the Survivor's Trust"), as described in this article.

A. During My Life. During my lifetime, income of the trust shall be added to and become principal.

C. At My Death. Upon my death, the trustee shall invest the corpus of the trust and shall pay income annually from the trust to my spouse if living. At the death of my spouse, or at the time of my death if my spouse predeceases me, the trustee shall divide and allocate the trust principal into as many separate trusts as there are children of mine then living and children of mine then deceased who have descendants then living. The trustee shall hold the trust share of any living child of mine for the benefit of said living child and, during the life of such child shall distribute the net income from said trust to said child, not less frequently than annually. Upon the death of a child their trust share shall be divided into as many trust shares as they have children, and during the life of such grandchildren the trustee shall distribute the net income of that trust share to that grandchild not less frequently than annually. If a child of mine should have no living children at their death, then their trust share is to be divided among all my grandchildren per capita. At the death of a grandchild, the trust share shall be distributed outright and free of trust to their children, or if they have no children then to all my great-grandchildren, then living, per capita.

## Article 7 The Trustees

A. Named Trustees. The Noble Trust Company of Manchester, New Hampshire, is the Trustee of this Trust.

(1) No Trustee named in this instrument or by the Trustee shall be required to provide surety or other security on a bond.

(2) No Trustee shall be responsible for or need inquire into any acts or omissions of a prior Trustee.

(3) The Trustee may appoint any person as any additional Trustee to serve at the pleasure of the appointing Trustee.

(4) No one may replace the Trustee without my permission and the acquiescence of the Trustee.

(5) The Trustee shall be entitled to both administrative fees and investment management fees when they are providing both duties. If at any point Noble Trust Company ceases to be trustee they shall be entitled to claim a surrender penalty assessed against the value of the trust.

(6) If any action, suit, or arbitration is brought against any trustee, the trustee may claim against the trust any costs of such an action and the Trustee is hereby indemnified against any expenses or liabilities arising from such actions.



(7) I specifically authorize the Trustee, and by extension any officer or related entity to the Trustee, to purchase, hold, and liquidate insurance policies for this trust from insurance providers and to be paid commissions for these activities. I do not see a conflict-of-interest in this activity but if there might be one deemed or claimed at a later date, I hereby acknowledge and waive any conflict-of-interest claim, and indemnify the trustee from the same.

B. Delegation. A Trustee may delegate any powers and authorities to another Trustee for any period that the delegating Trustee may deem appropriate. A person dealing in good faith with any Trustee may rely without inquiry upon that Trustee's representation that a particular power or authority has been delegated and not rescinded. However, the Trustee may not delegate the entire Trust to a co-Trustee or other person.

C. Resignation. Any Trustee may resign, and appoint a successor Trustee, by giving written notice specifying the effective date of the resignation to the designated successor and to each adult beneficiary to whom Trust income may be distributed. If no successor is designated, a resigning Trustee shall give this written notice to each adult beneficiary to whom Trust income then may be distributed. A successor Trustee to fill any vacancy shall be named by majority vote of the adult beneficiaries to whom Trust income then may be distributed.

D. Compensation. Each person who serves as a Trustee shall be entitled to receive reasonable compensation for services rendered. Noble Trust Company shall administer the trust for an annual fee of \$1500 until my death. After that their fee shall be 50 basis points for administration and 120 basis points for investment management. Noble Trust Company has the right to change this fee schedule if and when necessary so long as any increases are within industry norms. In the case of a successor corporate Trustee, reasonable compensation is based upon its published fee schedule in effect at the time its services are rendered or as otherwise agreed, and its compensation may vary from time to time based on that schedule.

E. Management Powers. I grant the Trustee the following powers, exercisable in a fiduciary capacity.

a. The Trustee shall have no duty to invest the principal of this Trust during my lifetime. The Trustee may hold and retain as part of the Trust any property received from any source, and invest and reinvest the Trust (or leave it temporarily uninvested) in any type of property and every kind of investment, in the same manner as a prudent investor would invest his or her own assets.

b. The Trustee may sell or exchange any real or personal property contained in the Trust, for cash or credit, at public or private sale, and with such warranties or indemnifications as the Trustee may deem advisable.

c. The Trustee may borrow money (even from a Trustee or a beneficiary of the Trust), for the benefit of the Trust and secure these debts with assets of the Trust. The Trustee may lend money to the trust or provide collateral to the trust if needed and secure this debt with assets of the trust without my explicit approval being required and may charge interest and fees for this service.

d. The Trustee has the authority to borrow money for the purpose of purchasing one or more life insurance policies. The Trustee may also pledge the cash value of any insurance policies held as collateral for premium loans and assign the death benefit as

additional collateral to secure loans to pay insurance premiums. Any amounts borrowed by the Trustee, outstanding at the time of my death, will be repaid from insurance death benefits received before any distributions are made to the beneficiaries. If any insurance premium financing arrangement entered into by the Trustee does not in fact provide sufficient funds to pay the life insurance premiums, the Trustee will not be held liable for the insufficiency.

e. The Trustee may grant security interests and execute all instruments creating such interests upon such terms as the Trustee may deem appropriate.

f. The Trustee may compromise and adjust claims against or on behalf of the Trust on such terms as the Trustee may deem appropriate.

g. The Trustee may take title to any securities in the name of any custodian or nominee, without disclosing this relationship.

h. The Trustee may determine whether receipts are income or principal and whether disbursements are to be charged against income or principal, to the extent not established clearly by state law. Determinations made by the Trustee in good faith shall not require equitable adjustments.

i. The Trustee may make all tax elections and allocations the Trustee may consider appropriate; however, this authority is exercisable only in a fiduciary capacity and may not be used to enlarge or shift any beneficial interest except as an incidental consequence of the discharge of fiduciary duties. All tax elections and allocations made by the Trustee in good faith shall not require equitable adjustments.

j. The Trustee may employ such lawyers, accountants, and other advisers as the Trustee may deem useful and appropriate for the administration of the Trust. The Trustee may employ a professional investment adviser in managing the investments of the Trust (including any investment in mutual funds, investment trusts, or managed accounts), delegate to this adviser any discretionary investment authorities, and rely on the adviser's investment recommendations without liability to any beneficiary.

k. The Trustee may divide and distribute the Trust in kind, in money, or partly in each, without regard to the income tax basis of any asset and without the consent of any beneficiary. The decision of the Trustee in dividing any portion of the Trust between or among two or more beneficiaries shall be binding on all persons.

l. The Trustee may exercise all incidents of ownership over any life insurance policies held as part of the Trust funds.

m. The Trustee may pay any premiums or other charges from Trust income or principal. If the Trust funds are inadequate to pay such premiums or charges, the Trustee may (after receiving written notice that a premium or charge has not been paid), do one or more of the following: (a) use any automatic premium loan feature, (b) borrow against any policy cash reserves (whether or not on the policy for which premium or charges shall be paid), (c) elect any automatic non-forfeiture feature, (d) borrow funds from a lender, or (e) pursue whatever course the trustee deems advisable in the situation.

n. The Trustee may decline to enter into or maintain any litigation, endorse policy payments, or take other action respecting any Trust insurance policies, until the Trustee shall have been indemnified against all expenses and liabilities involved in such action.

o. The Trustee may decline to inquire whether the Trustee or the Trust shall have been designated beneficiary of any insurance policy or other death benefit, and the Trustee need not act with respect to such policies until receipt of written notice that the Trustee or the Trust may be a beneficiary.

p. The Trustee may, at their discretion, divide the Trust into as many sub-trusts or subparts as necessary in order to complete the Grantor's objectives and to allocate any generation skipping tax exemption amongst those sub-trusts (which will be treated as separate taxable entities).

q. The Trustee may reject any assets.

r. The Trustee may segregate property that has potential tax, environmental or other problems into a separate independent trust in order to insulate remaining Trust assets from liability exposure occasioned by those separate Trust assets.

s. The Trustee may allocate the generation skipping transfer tax exemption to any Trust established hereunder or any sub-trust established hereunder and may divide trusts into separate entities for purposes of generation skipping transfer tax exemption allocation.

t. The Trustee may allocate basis among assets in the Trustee's absolute discretion pursuant to the rules for allocation of basis as applicable under the Economic Growth and Tax Relief Reconciliation Act of 2001.

u. The Trustee, when investing the trust assets, may do so in any fashion without regard to Prudent Investor Rules, Asset Allocation, Modern Portfolio Theory, Diversification, the dictates of the Uniform Trust Code, or whatever investment regime is currently in force for fiduciaries. I specifically understand that there are benefits and drawbacks to this position but I do not want the Trustee hindered in any way from making the wisest decisions that it deems in its capacity to be in the best interest of the trust.

The discretion given to the Trustee by this Trust Agreement shall be absolute, final and binding on all persons thereafter interested.

#### **Article 8**

##### **Certain Transfers**

The Trustee may lend money to and buy assets from my estate or any Trust created by me. The Trustee shall not distribute or advance funds except through arm's length loans or purchases.

#### **Article 9**

##### **Overriding Tax Purposes**

This article states some of my purposes in creating this Trust, and all provisions of this Trust shall be construed so as best to effect these purposes.

- A. Completed Gifts. All gifts made to this Trust shall be completed gifts of present interests for federal gift tax purposes.
- B. Estate Tax Exclusion. The assets of this Trust, including any life insurance proceeds, shall be excluded from my gross estate for federal estate tax purposes.
- C. Income Taxation. This Trust shall be a "grantor trust" owned by me for federal income tax purposes, during my lifetime.

D. Limited Power to Amend. The Trustee may, by an instrument in writing, amend this agreement in any manner required to meet the tax objectives listed in this article. No amendment under this paragraph may increase the class of beneficiaries or give any beneficial interest or economic benefit in this Trust to any person not already a beneficiary of this Trust. This power to amend may not be exercised by any Trustee who is also a beneficiary to whom income of this Trust may be distributed, or who may be removed by any beneficiary. The Trustee may not amend this Trust in any manner that would cause any assets passing under the article entitled "Contingent Marital Share" not to qualify for the federal estate tax marital deduction.

#### **Article 10** **Trust Administration**

- A. Spendthrift Limits. No interest in the Trust shall be subject to the beneficiary's liabilities or creditor claims, assignment or anticipation.
- B. Protection From Creditors. A Trustee who determines that a beneficiary would not benefit as greatly from any outright distribution of Trust income or principal because of the availability of the distribution to the beneficiary's creditors, shall instead expend those amounts for the benefit of the beneficiary. This direction is intended to enable the Trustee to give the beneficiary the maximum possible benefit and enjoyment of all of the Trust income and principal to which the beneficiary is entitled.
- C. Multiple Trusts and Shares. The Trustee may invest the assets of multiple Trusts in a single fund if the interests of the Trusts are accounted for separately.
  - (1) The Trustee may merge or consolidate any Trust into any other Trust that has the same Trustee and substantially the same dispositive provisions.
  - (2) The Trustee may divide any Trust into multiple separate Trusts.
- D. Accountings. The Trustee shall not be required to file annual accounts with any court or court official in any jurisdiction.
- E. Disabled Beneficiaries. The Trustee may distribute income, principal, or both to a minor or disabled beneficiary to his or her parent, guardian, personal representative, or the person with whom the beneficiary resides, without looking to the proper application of those payments.

- F. Perpetuities. The Trustee shall distribute any Trust assets still held in Trust on the date Twenty (20) years after the death of the last to die of me, my spouse, and my descendants alive on the date this Trust is created, to the beneficiaries then authorized to receive Trust income, in proportion to their interests in Trust income or, if their interests are not ascertainable, in equal shares, per stirpes, notwithstanding any other provision of this instrument.
- G. Change of Situs. The Trustee may change the situs of any Trust (and to the extent necessary or appropriate, the Trust assets) to a state or country other than the one in which the Trust is established or then administered, if the Trustee believes it to be in the best interests of the Trust or the beneficiaries. The Trustee may elect that the law of such other jurisdiction shall govern the Trust to the extent necessary or appropriate under the circumstances.
- H. Additional Transfers. Any person may transfer property to the Trustee at any time and may make the Trustee the beneficiary of any life insurance policy. The Trustee may refuse to accept a transfer if acceptance is not in the Trust's best interests. The Trustee may accept a gift subject to one or more conditions imposed by the donor or the Trustee if it is in the best interests of the Trust and the beneficiaries and if the condition does not change the rights of a beneficiary with respect to any prior gift.
- I. Tax-Sensitive Powers. The Trustee may make no distribution or expenditure that would discharge a legal obligation of mine or give me any pecuniary benefit. The Trustee may not participate in the exercise of any discretion to distribute principal to himself or herself other than for his or her health, education, support, and maintenance, or any of them, nor may any Trustee participate in the exercise of any discretion to distribute or expend principal or income in a manner that would discharge the Trustee's personal obligation to support the beneficiary. If this paragraph precludes the Trustee from exercising a discretion otherwise granted them, an "independent person" (as defined below) may be named by the Trustee as an additional Trustee, with the sole authority to exercise these discretions. For this purpose, an "independent person" means a person who is not married to and living together with the Trustee, and is not the Trustee's father, mother, issue, brother or sister, an employee of the Trustee, a corporation or any employee of a corporation in which the stock holdings of the Trustee and Trust are significant from the viewpoint of voting control, or a subordinate employee of a corporation in which the Trustee is an executive.
- J. Certain Liabilities Grantor considers life insurance policies as proper investments of trust principal and the Trustee is authorized to invest or retain indefinitely any part or all of the trust principal in those policies without being limited by any statute or rule of law governing investments by Trustees, even though the Trustee may otherwise be prohibited from purchasing such policies as a trust investment and though their retention might violate principles of investment diversification. Furthermore, the Trustee shall exercise or decline to exercise any and all rights, powers, directions, elections, options, privileges and other incidents of ownership with respect to such policies as the Trustee, in the Trustee's sole discretion, shall determine. The Trustee is hereby exonerated from any and all liability for the results of any exercise or non-exercise of any incident of ownership with respect to any such policies. On behalf of Grantor and Grantor's successors, heirs and assigns, Grantor indemnifies and holds harmless the Trustee from and against any and all claims, liabilities, penalties, and

costs, including attorney's fees, arising from any claim, demand, order or other action related in any way to investing in and retaining any such insurance policies and exercising or failing to exercise any incident of ownership therein. Notwithstanding any contrary provision of this instrument, the Trustee may also at any time require any beneficiary hereunder to indemnify and hold harmless the Trustee from and against any and all claims, liabilities, penalties and costs, including attorney's fees, arising from any claim, demand, order or other action related in any way to investing in and retaining any such insurance policies in exercising or failing to exercise any incident of ownership therein and the Trustee may withhold a distribution to or for the benefit of that beneficiary until receiving from that beneficiary such indemnification; provided, however, that the Trustee may not take any action which would in any way impair any rights or withdrawal granted pursuant to this Agreement or any federal or state marital deduction for property passing to my spouse at death.

#### **Article 11**

##### **Annual Withdrawal Power: Guidelines**

This article applies to the annual withdrawal powers created in the article entitled "Annual Withdrawal Power."

A. My Beneficiary's Shares. The portion of each contribution that may be withdrawn by my beneficiary (the "Beneficiary's Withdrawal Amount") shall be the smallest of the following figures:

- (1) The beneficiary's proportionate share of the Beneficiary's Withdrawal Amount;
- (2) Five Thousand Dollars (\$5,000) or, if greater, five percent (5%) of the value of the Trust fund on the latest date that the withdrawal power lapses; and
- (3) The amount of the federal gift tax annual exclusion allowable with respect to the Beneficiary's Withdrawal Amount, or twice the gift tax annual exclusion with respect to each donor who is married on the date of such contributions. This limitation shall be determined taking into account all information reasonably available to the Trustee at the time of such contribution, regarding other gifts made to a child of mine by the same donor outside the Trust.

These limitations shall relate to the aggregate of all contributions made to the trust by the same donor in the same calendar year, and with respect to multiple contributions made by the same donor during the same calendar year, the limitations applied to the later contributions shall be adjusted to reflect the prior withdrawal rights that have already existed with respect to the gifts by the same donor in the same calendar year.

- B. Lapse. Each unexercised withdrawal power shall lapse on the earlier of the date sixty(60) days after the date of the contribution to which it relates, or December 31 of the calendar year in which the contribution was made.
- C. Immediate Power. These withdrawal powers shall arise immediately after each contribution to the Trust.

- D. Priority. These withdrawal powers shall take precedence over any other power or discretion granted the Trustee or any other person.
- F. Exercise. Each holder (as defined below) of a withdrawal power can exercise this withdrawal power by a writing delivered to a Trustee. The legally authorized personal representative of any holder who is himself or herself unable to exercise a withdrawal power because of a legal disability, including minority, may make the demand on the holder's behalf. If there is no legally authorized personal representative, the Trustee shall designate an appropriate adult individual (who may be a Trustee but who may not be me), to may make the demand on such disabled holder's behalf.
- G. Notice. The Trustee must reasonably notify each holder or other person authorized to exercise a withdrawal power of its existence and that of any contributions made to the Trust that are subject to the power.
- H. Satisfying Demand. The Trustee may satisfy any demand for a distribution under this article by distributing cash, other assets, or fractional interests in other assets, as the Trustee may deem appropriate.
- I. Meaning of Certain Terms.
- (1) "Contribution" means any cash or other assets transferred to the Trustee to be held as part of the Trust funds, and any payment of premiums on life insurance policies owned by the Trust. The amount of any contribution is its federal gift tax value, as determined by the Trustee at the time of the transfer.
  - (2) A "holder" means each of my then-living Children.
  - (3) Any reference in this article to "five percent (5%)" shall automatically be adjusted to refer to that percentage referred to in Sec. 2514(e)(2) of the Internal Revenue Code of 1986, and any reference in this article to "five thousand dollars (\$5,000)" shall automatically be adjusted to refer to that amount referred to in Section 2514(e)(1) of the Internal Revenue Code of 1986.

## Article 12

### Definitions and Miscellaneous

- A. Children and Descendants. Children and descendants include those now or hereafter born, and in addition to natural born, any child or descendant now or hereafter legally adopted.
- B. Disabled. An individual is disabled or under a disability if the Trustee (or, if the person whose disability is in question is a Trustee, the next successor Trustee) receives written certification from two physicians, both of whom have personally examined the individual and at least one of whom is board certified in the specialty most closely associated with the alleged disability.
- (1) The certification must state that the individual is physically or mentally incapable of managing his or her own finances, regardless of cause and regardless

of whether there is an adjudication of incompetence, mental illness, or need for a committee, conservator, guardian, or other personal representative.

(2) A certification of disability shall be rescinded when the then serving Trustee shall receive a new certification from two physicians, both of whom have personally examined the individual and at least one of whom is board certified in the specialty most closely associated with the alleged disability. This new certification must state that the individual is capable of managing his or her own finances.

(3) No person is liable to anyone for actions taken in reliance on these certifications or for dealing with a Trustee other than the one removed for disability based on these certifications.

- C. Per Stirpes. Property that is to be divided among an individual's surviving or then living descendants, "per stirpes," shall be divided into as many equal shares as there are children of the individual who are then living or who have died leaving surviving or then living descendants. A share allocated to a deceased child of the individual shall be divided further among such deceased child's surviving or then living descendants in the same manner.
- D. Shall and May. A direction that a Trustee or other person "shall" take an action means that such Trustee or other person shall have no discretion in deciding whether or not to take such action, except that a direction that the Trustee shall make a distribution of income, principal, or both, for "any purpose" or under any specific standard shall require the Trustee to make that distribution only if the Trustee first determines that the standard has been met. A statement that the Trustee or other person "may" do something shall give the Trustee or other person absolute and uncontrolled discretion whether or not to do such thing, exercisable by the Trustee or other person alone and subject to correction by a court only if the statement is directed towards a Trustee and such Trustee should act in bad faith, in violation of specific provisions of this Will, or in violation with the Trustee's fiduciary duties.
- E. Standards. A provision that directs or permits the Trustee to distribute income, principal, or both, for a beneficiary's "health," "education," "support," or "maintenance," or any combination of these purposes, shall be construed consistently with the meaning given to those terms by applicable federal estate and gift tax laws, so that such a standard is for federal estate and gift tax purposes, as ascertainable standard relating to the health, education, support, or maintenance of the possessor. However, the holder of such an authority shall have the greatest discretion possible consistent with these tax rules.
- F. Survivorship. No person shall be deemed to have survived me for purposes of this Trust unless he or she is living on the date ninety (90) days after the date of my death.
- G. Tax-Related Terms. All tax-related terms shall have the same meaning in the will that they have in the Internal Revenue Code of 1986, as amended.
- H. Trust. The "Trust" without further qualification or specification, shall refer to all Trusts under this instrument.



- I. Trustee. The "Trustee" shall include each Trustee individually, multiple Trustees, and any successor.
- J. Copies. There is only one signed original of this Trust. Anyone may rely on a copy of this Trust certified by a notary public or similar official to be a true copy of the signed original (and of any amendments) as if that copy were the signed original. anyone may rely upon any statement of fact certified by the person who appears from the original document or a certified copy to be a Trustee.
- K. Number. Whenever the context of the will requires, the singular number includes the plural and the plural the singular.
- L. Applicable Law. This Trust shall be governed by and construed according to the laws of the state of New Hampshire.

IN WITNESS WHEREOF, Grantor and Trustee have executed this Irrevocable Life Insurance Trust Agreement as of the day and year first above written.

DECLARED AND AGREED on the date first noted above.

 Date 7-25-06  
Grantor

I hereby acknowledge receipt in trust of the corpus specified in Attachment "A" to this Charitable Trust.

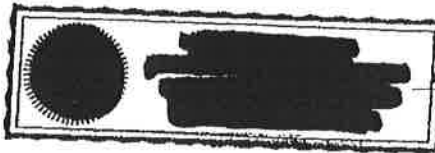
 Date 7/26/06  
Noble Trust Company, Trustee

STATE OF

COUNTY OF

Subscribed, sworn to and acknowledged before me by on  
July 25, 2006.

(SEAL)



NOTARY PUBLIC

STATE OF

COUNTY OF

NH  
HILLSBOROUGH

Subscribed, sworn to and acknowledged before me by EVE PRACHAR on behalf  
of Noble Trust Company on JULY 26, 2006

(SEAL)

*[Signature]*  
NOTARY PUBLIC



THE MARILYN REAMER CS TRUST (the "Trust")

Glenn A. Perlow, Bank Commissioner of the State of New Hampshire, as duly appointed Liquidator (the "Liquidator") of Noble Trust Company ("Noble"), acting on behalf of Noble pursuant to authority granted by the Merrimack County Superior Court by Order dated \_\_\_\_\_, 2013 entered in the civil proceeding entitled *In the Matter of the Liquidation of Noble Trust Company* (Docket No. 08-E-0053), and in accordance with the provisions of paragraph (j) of Article X of the Trust, hereby effects the resignation of Noble as the Protector of the Trust, and appoints Ryan K. Crayne as the successor Protector of the Trust.

Dated: \_\_\_\_\_, 2013

GLENN A. PERLOW, BANK  
COMMISSIONER OF THE STATE OF  
NEW HAMPSHIRE, AS LIQUIDATOR  
OF NOBLE TRUST COMPANY

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Acceptance by Successor Protector

The undersigned hereby accepts his appointment as successor Protector of the Trust.

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Ryan K. Crayne

THE MARILYN REAMER IRREVOCABLE TRUST AGREEMENT (the "Trust")

Glenn A. Perlow, Bank Commissioner of the State of New Hampshire, as duly appointed Liquidator (the "Liquidator") of Noble Trust Company ("Noble"), acting on behalf of Noble pursuant to authority granted by the Merrimack County Superior Court by Order dated \_\_\_\_\_, 2013 entered in the civil proceeding entitled *In the Matter of the Liquidation of Noble Trust Company* (Docket No. 08-E-0053), and in accordance with the provisions of Article XI of the Trust, hereby effects the resignation of Noble as the Trustee of the Trust, and appoints Ryan K. Crayne as the successor Trustee of the Trust.

At any time within one hundred eighty days after this trust instrument is executed, the majority in number of Marilyn Reamer's descendants who are living and competent may remove Ryan K. Crayne as the Trustee by a written notice delivered to Ryan K. Crayne; provided, however, that no such removal shall become effective until a successor Trustee has accepted such office.

Dated: \_\_\_\_\_, 2013

GLENN A. PERLOW, BANK  
COMMISSIONER OF THE STATE OF  
NEW HAMPSHIRE, AS LIQUIDATOR  
OF NOBLE TRUST COMPANY

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Acceptance by Successor Trustee

The undersigned hereby accepts his appointment as successor Trustee of the Trust.

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Ryan K. Crayne

Settlement Agreement and Mutual Release of  
Claims Regarding AXA Policies

# **EXHIBIT C**

**(Proposed Order)**

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of  
Noble Trust Company**

**ORDER ON JOINT MOTION OF LIQUIDATOR AND  
CREDIT SUISSE ASSENTED TO BY WELLS FARGO FOR  
APPROVAL OF THEIR SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE OF CLAIMS REGARDING AXA POLICIES**

Upon consideration of the Joint Motion of Liquidator and Credit Suisse Assented to By Wells Fargo for Approval of Settlement Agreement and Mutual Release of Claims Regarding AXA Policies dated \_\_\_\_\_, 2013 (the "Motion"), pursuant to which Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as Liquidator of Noble Trust Company (the "Liquidator" and "Noble Trust," respectively) and Credit Suisse Securities (USA) LLC, Credit Suisse Premium Finance LLC, Credit Suisse Management LLC, CSFB Private Insurance Brokerage LLC, Credit Suisse Lending Trust (USA) 2, and Credit Suisse Lending Trust (USA) 3 (collectively, "Credit Suisse"), and with the assent of Wells Fargo Bank, N.A. ("Wells Fargo"), seek approval of their Settlement Agreement and Mutual Release of Claims Regarding AXA Policies (the "Settlement Agreement"); due written notice of the Motion, the hearing on the Motion and the deadline for filing objections thereto having been given and served upon all creditors and other interested persons entitled thereto, including by publication in the manner specified by this Court's Order Approving Notice and Objection Procedures for Hearings on Motions for Approval of Settlement and Release Agreements dated

\_\_\_\_\_, 2013 (the "Procedures Order"); the Court having reviewed the Motion and having reviewed the Settlement Agreement and the Confidential Affidavit in Support of the Motion filed under seal in accordance with the Procedures Order and this Court's Order Establishing Settlement Agreement Review Procedures dated December 5, 2012; the Court also having reviewed any objections to the Motion; having heard the arguments and statements of counsel, and being otherwise fully advised in the premises; and having found that approval of the Settlement Agreement is an appropriate and prudent exercise of the Liquidator's judgment, and is in the best interests of this estate and its creditors; and, after due deliberation and sufficient cause appearing therefor; it is hereby

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is granted, and the Settlement Agreement is approved. The Liquidator, Credit Suisse, Wells Fargo and all other parties are authorized to take all steps and execute all documents necessary or convenient to consummate or otherwise enter into the Settlement Agreement. Neither the Liquidator, nor Credit Suisse, nor Wells Fargo shall have or incur any liability to any person or entity with respect to any of the actions required or permitted to implement the Settlement Agreement or for having entered into the Settlement Agreement.

2. In compliance with the Procedures Order, the Liquidator has provided adequate notice to creditors and other interested persons, including anyone who did not otherwise receive notice by mail, of the hearing on the Motion, the issues to be decided at the hearing, and the deadline for filing objections.



3. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, including all reservations of rights included therein which are not otherwise provided for by this Order, are overruled on the merits.

4. The Settlement Agreement shall become effective on the date that all of the conditions set forth in the Settlement Agreement (section 5) have been fully satisfied (the "Effective Date").

5. On the Effective Date of the Settlement Agreement and the payment of the Settlement Funds, the Released Policies, together with all agreements relating to or in connection with such policies (including without limitation the Collateral Assignments, Guarantees and Insurer Consent and Acknowledgments), shall be released from the Noble Trust estate, shall not constitute assets of the Noble Trust estate, and shall not be subject to any provisions of this Court's Order Appointing Liquidator or the Order Clarifying Order Appointing Liquidator.<sup>1</sup> The Liquidator shall not assert any claims, defenses, setoffs or other actions in connection with the Released Policies, or any agreements relating to or in connection with such policies (including without limitation the Collateral Assignments, Guarantees and Insurer Consent and Acknowledgments).

6. The Liquidator is authorized to act as trust protector on behalf of Noble Trust for the purposes set forth in the Settlement Agreement. Within ten (10) business days of the Effective Date of the Settlement Agreement, the Liquidator shall: (i) effect Noble Trust's resignation as the trust protector of each Life Insurance Trust holding a Released Policy and (ii) appoint Ryan K. Crayne, of Winthrop & Weinstine, 225 South

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<sup>1</sup> Capitalized terms used in this Order and not otherwise defined herein are intended to have the same meaning as ascribed to them in the Settlement Agreement.

Sixth Street – Suite 3500, Minneapolis, Minnesota 55402 as the replacement trust protector in accordance with the terms of the applicable trust agreement.

7. Prior to resigning as protector of the Life Insurance Trusts holding the Released Policies and within ten (10) business days of the Effective Date of the Settlement Agreement, the Liquidator, acting on behalf of Noble Trust, shall (i) create new trusts (in substantially the form as attached to the Settlement Agreement) to be the beneficiaries of the Life Insurance Trusts, which own each of the Released Policies except the Marilyn Reamer Policy (the "New Beneficiary Trusts"); (ii) designate the applicable "New Beneficiary Trusts" as the beneficiaries of those Life Insurance Trusts pursuant to the provisions of the trust agreements for those Life Insurance Trusts; and (iii) name Ryan K. Crayne, of Winthrop & Weinstine, 225 South Sixth Street – Suite 3500, Minneapolis, Minnesota 55402 as the trustee for each of the New Beneficiary Trusts. With respect to the Released Policy owned by the Marilyn Reamer CS Trust, the Liquidator agrees to resign as trustee of the applicable Beneficiary Trust, and to appoint Ryan K. Crayne as replacement trustee, contemporaneously with resigning as trust protector of the Life Insurance Trust holding that Policy.

8. Once the actions required by the preceding paragraphs have been taken, the Liquidator shall have no further power to take any action with respect to, or exercise any power over, any of the Released Policies, the Life Insurance Trusts owning the Released Policies, or the New Beneficiary Trusts of such Life Insurance Trusts. Upon the Effective Date of the Settlement Agreement, neither the Liquidator, the Noble Trust estate, nor the prior Beneficiary Trusts (for which Noble Trust served as trustee) will have any further right, title or interest in the Life Insurance Trusts or the Released

Policies. Neither the Liquidator, nor Credit Suisse, nor Wells Fargo, nor Mr. Crayne shall have or incur any liability to any person or entity with respect to any of the actions required to implement the Settlement Agreement.

9. On the Effective Date, the Voided Policies shall be void *ab initio*, and all releases and bars of any claims by any Party or by any third party against such policies or against Credit Suisse or Wells Fargo or any Affiliate of Credit Suisse or Wells Fargo, shall become effective.

10. On the Effective Date, Credit Suisse's and Wells Fargo's interests in the Voided Policies, together with all agreements relating to or in connection with such policies (including without limitation the Collateral Assignments), shall be deemed to constitute assets of the Noble Trust estate and such policies shall be unenforceable. Neither Credit Suisse nor Wells Fargo shall have any obligations to any person with respect to the Voided Policies, including with respect to the payment of any unpaid premiums that may have become due and payable on or after February 11, 2008. Credit Suisse and Wells Fargo shall not seek to enforce the Voided Policies or recover from any person, directly or indirectly, any of the premiums financed in connection with the Voided Policies or any obligations arising from any documents or agreements executed in connection with such premiums, whether pursuant to the loan agreements, the Collateral Assignments, or any other documents or agreements, including any and all personal guarantees. Neither Credit Suisse nor Wells Fargo shall have any further obligations with respect to the Voided Policies.

11. Upon the Effective Date, all releases by and between the Liquidator, Credit Suisse and Wells Fargo provided for in the Settlement Agreement shall become effective.

12. Within ten (10) business days of the Effective Date, Credit Suisse shall release the Settlement Funds from escrow and direct such funds to be paid to an account designated by the Liquidator.

So Ordered.

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Hon. Larry M. Smukler

Joint Motion of Liquidator and Credit Suisse Assented To By  
Wells Fargo for Approval of Settlement Agreement and  
Mutual Release of Claims Regarding AXA Policies

# **EXHIBIT B**

**(Proposed Order)**

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of  
Noble Trust Company**

**ORDER ON JOINT MOTION OF LIQUIDATOR AND  
CREDIT SUISSE ASSENTED TO BY WELLS FARGO FOR  
APPROVAL OF THEIR SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE OF CLAIMS REGARDING AXA POLICIES**

Upon consideration of the Joint Motion of Liquidator and Credit Suisse Assented to By Wells Fargo for Approval of Settlement Agreement and Mutual Release of Claims Regarding AXA Policies dated June 6, 2013 (the "Motion"), pursuant to which Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as Liquidator of Noble Trust Company (the "Liquidator" and "Noble Trust," respectively) and Credit Suisse Securities (USA) LLC, Credit Suisse Premium Finance LLC, Credit Suisse Management LLC, CSFB Private Insurance Brokerage LLC, Credit Suisse Lending Trust (USA) 2, and Credit Suisse Lending Trust (USA) 3 (collectively, "Credit Suisse"), and with the assent of Wells Fargo Bank, N.A. ("Wells Fargo"), seek approval of their Settlement Agreement and Mutual Release of Claims Regarding AXA Policies (the "Settlement Agreement"); due written notice of the Motion, the hearing on the Motion and the deadline for filing objections thereto having been given and served upon all creditors and other interested persons entitled thereto, including by publication in the manner specified by this Court's Order Approving Notice and Objection Procedures for Hearings on Motions for Approval of Settlement and Release Agreements dated

\_\_\_\_\_, 2013 (the "Procedures Order"); the Court having reviewed the Motion and having reviewed the Settlement Agreement and the Confidential Affidavit in Support of the Motion filed under seal in accordance with the Procedures Order and this Court's Order Establishing Settlement Agreement Review Procedures dated December 5, 2012; the Court also having reviewed any objections to the Motion; having heard the arguments and statements of counsel, and being otherwise fully advised in the premises; and having found that approval of the Settlement Agreement is an appropriate and prudent exercise of the Liquidator's judgment, and is in the best interests of this estate and its creditors; and, after due deliberation and sufficient cause appearing therefor; it is hereby

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is granted, and the Settlement Agreement is approved. The Liquidator, Credit Suisse, Wells Fargo and all other parties are authorized to take all steps and execute all documents necessary or convenient to consummate or otherwise enter into the Settlement Agreement. Neither the Liquidator, nor Credit Suisse, nor Wells Fargo shall have or incur any liability to any person or entity with respect to any of the actions required or permitted to implement the Settlement Agreement or for having entered into the Settlement Agreement.

2. In compliance with the Procedures Order, the Liquidator has provided adequate notice to creditors and other interested persons, including anyone who did not otherwise receive notice by mail, of the hearing on the Motion, the issues to be decided at the hearing, and the deadline for filing objections.

3. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, including all reservations of rights included therein which are not otherwise provided for by this Order, are overruled on the merits.

4. The Settlement Agreement shall become effective on the date that all of the conditions set forth in the Settlement Agreement (section 5) have been fully satisfied (the "Effective Date").

5. On the Effective Date of the Settlement Agreement and the payment of the Settlement Funds, the Released Policies, together with all agreements relating to or in connection with such policies (including without limitation the Collateral Assignments, Guarantees and Insurer Consent and Acknowledgments), shall be released from the Noble Trust estate, shall not constitute assets of the Noble Trust estate, and shall not be subject to any provisions of this Court's Order Appointing Liquidator or the Order Clarifying Order Appointing Liquidator.<sup>1</sup> The Liquidator shall not assert any claims, defenses, setoffs or other actions in connection with the Released Policies, or any agreements relating to or in connection with such policies (including without limitation the Collateral Assignments, Guarantees and Insurer Consent and Acknowledgments).

6. The Liquidator is authorized to act as trust protector on behalf of Noble Trust for the purposes set forth in the Settlement Agreement. Within ten (10) business days of the Effective Date of the Settlement Agreement, the Liquidator shall: (i) effect Noble Trust's resignation as the trust protector of each Life Insurance Trust holding a Released Policy and (ii) appoint Ryan K. Crayne, of Winthrop & Weinstine, 225 South

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<sup>1</sup> Capitalized terms used in this Order and not otherwise defined herein are intended to have the same meaning as ascribed to them in the Settlement Agreement.



Sixth Street – Suite 3500, Minneapolis, Minnesota 55402 as the replacement trust protector in accordance with the terms of the applicable trust agreement.

7. Prior to resigning as protector of the Life Insurance Trusts holding the Released Policies and within ten (10) business days of the Effective Date of the Settlement Agreement, the Liquidator, acting on behalf of Noble Trust, shall (i) create new trusts (in substantially the form as attached to the Settlement Agreement) to be the beneficiaries of the Life Insurance Trusts, which own each of the Released Policies except the Marilyn Reamer Policy (the "New Beneficiary Trusts"); (ii) designate the applicable "New Beneficiary Trusts" as the beneficiaries of those Life Insurance Trusts pursuant to the provisions of the trust agreements for those Life Insurance Trusts; and (iii) name Ryan K. Crayne, of Winthrop & Weinstine, 225 South Sixth Street – Suite 3500, Minneapolis, Minnesota 55402 as the trustee for each of the New Beneficiary Trusts. With respect to the Released Policy owned by the Marilyn Reamer CS Trust, the Liquidator agrees to resign as trustee of the applicable Beneficiary Trust, and to appoint Ryan K. Crayne as replacement trustee, contemporaneously with resigning as trust protector of the Life Insurance Trust holding that Policy.

8. Once the actions required by the preceding paragraphs have been taken, the Liquidator shall have no further power to take any action with respect to, or exercise any power over, any of the Released Policies, the Life Insurance Trusts owning the Released Policies, or the New Beneficiary Trusts of such Life Insurance Trusts. Upon the Effective Date of the Settlement Agreement, neither the Liquidator, the Noble Trust estate, nor the prior Beneficiary Trusts (for which Noble Trust served as trustee) will have any further right, title or interest in the Life Insurance Trusts or the Released

Policies. Neither the Liquidator, nor Credit Suisse, nor Wells Fargo, nor Mr. Crayne shall have or incur any liability to any person or entity with respect to any of the actions required to implement the Settlement Agreement.

9. On the Effective Date, the Voided Policies shall be void *ab initio*, and all releases and bars of any claims by any Party or by any third party against such policies or against Credit Suisse or Wells Fargo or any Affiliate of Credit Suisse or Wells Fargo, shall become effective.

10. On the Effective Date, Credit Suisse's and Wells Fargo's interests in the Voided Policies, together with all agreements relating to or in connection with such policies (including without limitation the Collateral Assignments), shall be deemed to constitute assets of the Noble Trust estate and such policies shall be unenforceable. Neither Credit Suisse nor Wells Fargo shall have any obligations to any person with respect to the Voided Policies, including with respect to the payment of any unpaid premiums that may have become due and payable on or after February 11, 2008. Credit Suisse and Wells Fargo shall not seek to enforce the Voided Policies or recover from any person, directly or indirectly, any of the premiums financed in connection with the Voided Policies or any obligations arising from any documents or agreements executed in connection with such premiums, whether pursuant to the loan agreements, the Collateral Assignments, or any other documents or agreements, including any and all personal guarantees. Neither Credit Suisse nor Wells Fargo shall have any further obligations with respect to the Voided Policies.

11. Upon the Effective Date, all releases by and between the Liquidator, Credit Suisse and Wells Fargo provided for in the Settlement Agreement shall become effective.

12. Within ten (10) business days of the Effective Date, Credit Suisse shall release the Settlement Funds from escrow and direct such funds to be paid to an account designated by the Liquidator.

So Ordered.

Dated: \_\_\_\_\_, 2013

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Hon. Larry M. Smukler